(B) Corrective Notice of Land Redemption appearing in The Winter Haven Daily Chief, a newspaper published in Winter Haven, Florida

SUMMONS ISSUED ON 9 9 41 AND MARSHAL'S RETURN THEREON, omitted from the printed record, pursuant to Rule 23 of the Court.

* * * * * * * * *

On the 27th day of September 1941, the Defendants filed their Motion to Dismiss in the following words and figures to-wit:

(Title Omitted.)

The defendants move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against the defendants upon which relief can be granted.

(a) The questions of law involved have been determined by the Supreme Court of Florida adversely to plaintiffs.

(Signed) HENRY SINCLAIR.
(Henry Sinclair)
Attorney for defendants.

Address: Coker Building,
Winter Haven, Florida.

66 NOTICE OF MOTION.

To: D. C. Hull and
Hull, Lands & Whitehair,
Attorneys for Plaintiffs,
Deland, Florida.

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Chambers of W. J. Barker, United States District Judge, United States Post Office Building, Tampa, Florida, on the 14th day of October, A. D. 1941, at 2:00 o'clock P. M. of that day or as soon thereafter as counsel can be heard.

(Signed) HENRY SINCLAIR,
(Henry Sinclair)
Attorney for defendants.

Address: Coker Building,
Winter Haven, Florida.

State of Florida,
County of Polk, ss.

Henry Sinclair, being duly sworn says that he is attorney for the defendants in the within entitled cause, and that on the 26th day of September, A. D. 1941, at 6:00 o'clock P. M., he did mail to D. C. Hull and Hull Landis & Whitehair, attorneys for the Plaintiffs in the within entitled cause, a true and complete copy of the above and foregoing Motion to Dismiss and Notice of Motion, enclosed in an envelope bearing the requisite amount of United States postage stamps; addressed as follows: Messrs. D. C. Hull, and Hull, Landis & Whitehair, Attorneys at Law, DeLand, Florida, by depositing said envelope properly sealed, stamped and addressed as aforesaid in the Post Office at Winter Haven, Florida, and that the address on said en-

velope is the usual Post Office address of the Attorneys for the Plaintiffs.

HENRY SINCLAIR,
(Henry Sinclair)
Attorney for the Defendants.

Address: Coker Building,
Winter Haven, Florida.

Sworn to and subscribed before me this 26th day of September, A. D. 1941.

FLORENCE CECIL,
(Seal) Notary Public, State of Florida at Large.

My Commission expires Sept. 23, 1944.

On the 7th day of March 1942, the Court entered an Order granting Motion to Dismiss and entered in Civil Order Book 3 at page 511 in the following words and figures to-wit:

(Title Omitted.)

This cause came on for hearing on motion of the defendants filed September 27th, 1941, to dismiss complaint of W. J. Meredith and others, Plaintiffs, filed September 9th, 1941, and after argument of counsel of all parties affected and due consideration by the Court, It Is Ordered And Adjudged:

1. That said motion to dismiss be and the same is hereby granted.

2. That the Plaintiffs have ten days within which to amend.

Done And Ordered in Tampa, Florida, this the 7th day of March 1942.

WILLIAM J. BARKER,
United States District Judge.

Amendment to Complaint filed Mar. 16, 1942, in the following words and figures to-wit:

(Title Omitted.)

Come now the plaintiffs, W. J. Meredith, James C. Martin and A. R. Ohmart, by their undersigned attorneys, and amend their complaint heretofore filed in this cause in the following respects, to-wit:

A. Plaintiffs amend said complaint by adding to said complaint immediately after Paragraph 12 thereof, the following additional paragraph:

"13. (a) Since the filing of the original complaint in this cause, the Supreme Court of Florida has decided the case of George Andrews vs. the City of Winter Haven. The opinion of the Florida Supreme Court in said Andrews case was filed, to-wit, on September 13th, 1941, and is reported as Andrews vs. City of Winter Haven, ... Fla. ....., 3 So. 2nd. 805. The defendants in this cause are now relying upon said Andrews suit as determinative of the matters involved in this suit.

"(b) Said Andrews suit was instituted in the Circuit Court of Polk County, Florida, by one George Andrews. The said George Andrews claimed, in said suit, to be the

holder of 100 City of Winter Haven General Refunding Bonds, Issue of 1933, Said George Andrews, in said suit, purportedly sought to have his rights as a bondholder determined and adjudicated with respect to the payment of deferred interest, in the event said bonds should be called, and with respect to the effectiveness of any call which might be attempted without payment of deferred interest according to the terms of said bonds. However, no copy of the resolution authorizing the issuance of said City of Winted Haven General Refunding Bonds, Issue of 1933, was attached to the bill of complaint in said Andrews suit, and said resolution was not pleaded or referred to therein, and the terms and provisions of said resolution were not brought before the Court by the pleadings or briefs in said Andrews suit, and so the plaintiffs say that the bond contract was not fully submitted to the said Circuit Court or to the Supreme Court of Florida. The said George Andrews, in the bill of complaint filed in said suit, described himself, in paragraph numbered 1 thereof, as a substantial creditor of the City of Winter Haven and as a member of the refunding agency authorized to be created in and by a certain refunding contract dated the 16th day of May, 1933. A copy of said refunding contract was attached to said bill of complaint and made a part thereof as Exhibit 'A'. Said Exhibit 'A' recites that 'the refunding plan has been carefully considered by a citizens' committee composed of substantial taxpayers or representatives of substantial taxpayers, which committee is as follows: Percival Manchester, J. A. Dugger, W. H. Anderson, Arthur Klemm, George B. Aycrigg, George Andrews and A. M. Tiiden,' and that 'the citizens' committee has recommended the program and indorsed the same.' The George Andrews mentioned in said Exhibit 'A' is the same George Andrews as is referred to in said Andrews suit. In truth and in fact, the said George Andrews was and still is a substantial property owner and taxpayer in the said City of Winter Haven, and owns real estate in said City of

Winter Haven assessed at a valuation of more than $100,000.00 for taxation purposes by the said City of Winter Haven. Said George Andrews is also the owner of personal property subject to taxation by the said City of Winter Haven. Said George Andrews, in his capacity as trustee, is the owner of other taxable real property in the said City of Winter Haven. Plaintiffs respectfully charge and aver that the interest of the said George Andrews, as an owner of property subject to taxation by the said City of Winter Haven, is greater than his interest as the owner of the said 100 City of Winter Haven General Refunding Bonds, Issue of 1933. The bill of complaint in said Andrews suit consists of 8 typewritten pages, exclusive of the exhibits therein referred to, and said exhibits consist of 17 pages. Said bill of complaint was filed on the 23rd day of June, A. D. 1941 and the indorsements thereon so show. No summons or process of any kind was issued or served upon the said City of Winter Haven in said Andrews suit. On the contrary thereof, the said City of Winter Haven filed its answer to said bill of complaint on the very day upon which said bill of complaint was filed and the indorsements upon said answer so show. Said answer consists of 7 typewritten pages and it is apparent that said bill of complaint must have been submitted to the City of Winter Haven, or its counsel, well in advance of the filing thereof, so as to permit the filing of said answer upon the same day that the bill of complaint was filed. On the day of the filing of said bill of complaint, to-wit, the 23rd day of June, A. D. 1941, the said George Andrews, through his counsel, filed a motion for a decree upon the bill of complaint and the answer thereto. So, it is apparent that the answer of the City of Winter Haven to said bill of complaint must have been prepared and submitted to the said George Andrews, or his counsel, well in advance of the filing of said bill of complaint or of said answer. Said motion for a decree on bill and answer was submitted to one of the judges

of the Circuit Court in and for Polk County, Florida, at Lakeland, Florida, on the 23rd day of June, A. D. 1941, the very day upon which said bill of complaint and said answer and said motion were filed. An order entitled 'Order Granting Motion for Decree on Bill and Answer' was signed by the said Circuit Judge, in the City of Lakeland, Florida, on the morning of the 23rd day of June, A. D. 1941, the very day upon which said bill of complaint and said answer and said motion were filed. Said order consists of 7 typewritten pages, and purports to discuss and determine 6 separate questions of law, including constitutional questions, and cites decisions of the Supreme Court of Florida in reference thereto. Said questions were somewhat intricate and involved a consideration of the documents exhibited with the pleadings and a consideration of the constitution and statutes of the State of Florida and the decisions of the Florida Supreme Court and said questions could not have been thoroughly presented, argued and considered, in the time consumed in said hearing, as fully appears from the fact that, although said order was signed in the City of Lakeland, Florida, on the 23rd day of June, A. D. 1941, said order was filed for record, in the office of the Clerk of the Circuit Court of Polk County Florida, in the City of Bartow, Florida, some 12 or 15 miles from the said City of Lakeland, Florida, at the hour of 10:50 o'clock in the forenoon, as appears from the certificate of the Clerk of the Circuit Court indorsed upon said order. It therefore appears that said order must necessarily have been prepared well in advance of the hearing of said motion, and prior to the filing of either the bill of complaint or the answer, and said order shows on its face that it was prepared by someone familiar with the contents of both the bill of complaint and the answer. By reason of the foregoing facts, plaintiffs respectfully charge and aver that said Andrews suit was not instituted for the purpose of protecting the rights of the said George Andrews in his capacity as a bondholder, or those of any

bondholder, but rather for the purpose of obtaining a decree favorable to the said George Andrews in his capacity as the owner of property taxable by the said City of Winter Haven, and adverse to the interests of the bondholders of the said City of Winter Haven, and that, because of the haste with which said litigation was conducted, it was impossible for any other bondholder of the said City of Winter Haven to have learned of said suit and to have intervened therein. Plaintiffs therefore aver that said Andrews suit was not a bona fide law suit, and is not binding upon any bondholder except the said George Andrews, and that the same is not entitled to be regarded as a judicial precedent nor as a determination of any question by the State Courts of Florida. A complete certified copy and transcript of the record of the proceedings in the said Andrews suit, in the Circuit Court of Polk County, Florida; including photostatic copies of all papers filed in said Andrews suit, together with the indorsements upon said respective papers, is hereto attached, marked Exhibit E, and hereby made a part hereof.

"(c) The brief filed on behalf of the said George Andrews, in the Supreme Court of Florida, in said Andrews suit, makes no reference to the cases of Sullivan vs. City of Tampa, 101 Fla. 298, 134 So. 211, and State vs. Special Tax School District No. 5 of Dade County, 107 Fla. 93, 144 So. 356, both of which cases were decided prior to the issuance of the Winter Haven General Refunding Bonds of 1935, and both of which cases squarely held to an interpretation and construction of Section 6, Article IX, of the Florida Constitution, as amended in 1930, which is in absolute conflict with the opinion of the Supreme Court of Florida in said Andrews suit, in so far as the question involved in this suit is concerned. Said brief filed on behalf of George Andrews, in the Supreme Court of Florida, in said Andrews suit, makes no reference to the cases of Bay County vs. State, 116 Fla. 656, 157 So. 1, and State vs.

Citrus County, 116 Fla. 676, 157 So. 4, re-affirming the holding in the Sullivan case, and makes no reference to the case of State vs. City of Miami, 116 Fla. 517, 157 So. 13, all of which cases were decided in September, 1934, at about the time that said City of Winter Haven General Refunding Bonds of 1933 were being issued and circulated, and all of which cases were entirely consistent with and paved the way for the decision of the Supreme Court of Florida in the case of State vs. Sarasota County, 118 Fla. 629, 159 So. 797, in which case, on March 4th, 1935, the Florida Supreme Court held that deferred interest provisions in callable refunding bonds issued to refund outstanding non-callable bonds were not in violation of the constitutional amendment above referred to. Although the rules of the Supreme Court of Florida, in force at the time of the pendency of said Andrews suit, contemplated the filing of a reply brief by the said George Andrews, the appellant in said Andrews suit, no such reply brief was filed, and the brief filed on behalf of the appellee, the City of Winter Haven, in said Andrews suit, was permitted to go unanswered. The said brief that was filed on behalf of the said George Andrews, as aforesaid, shows that no effort was made on behalf of the said George Andrews to invoke the principle that the law to be applied in considering a contract is the law which existed at the time when the contract was made, which doctrine was announced by the Supreme Court of the United States in the case of Gelpcke vs. Dubuque, 1 Wall. (U. S.) 175, and adopted by the Supreme Court of Florida in the case of Columbia County Commissioners vs. King, 13 Fla. 451; and re-affirmed by the Supreme Court of Florida in a number of its subsequent decisions. No effort whatever was made in the said brief of the said George Andrews to call to the attention of the Supreme Court of Florida its earlier decisions upon which the takers of the City of Winter Haven General Refunding Bonds of 1933 relied in accepting said bonds.

"(d) No reference is made in either the pleadings or the briefs in said Andrews suit to the provision of the resolution authorizing said City of Winter Haven General Refunding Bonds, Issue of 1933, to the effect

"That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforcible by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforcible in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

And neither the Supreme Court of Florida nor the Circuit Court of Polk County, Florida, in said Andrews suit, gave any consideration whatever to said provision or made any determination of the right of a bondholder to assume the position of a holder of a like amount of the original indebtedness refunded and enforce his claim for payment as such."

(e) Plaintiffs do not own any property subject to taxation by the City of Winter Haven.

B. Plaintiffs further amend said complaint by eliminating subdivision numbered 2 of that portion of said complaint beginning with the words "Wherefore, plaintiffs demand:", and substituting in lieu thereof the following:

"2. That this Court will declare that as to the City of Winter Haven, Florida, General Refunding Bonds, Issue of 1933, dated April 1, 1933, owned and held by Plaintiffs, the said City has the right to call said bonds on the following basis only:

"(a) If said bonds are called for payment on or before April 1, 1943, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus one-half of the deferred or accumulated interest for ten years.

"(b) If said bonds are called for payment after April 1, 1943, but on or before April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforcible and collectible, plus three-fourths of the deferred or accumulated interest (all of said deferred interest having accrued on April 1, 1943); Provided, however, that during this period no call for payment of said bonds whose maturity is less than two (2) years removed shall be effective unless said City makes available funds for the payment of the principal of said Bonds, plus the accrued interest thereon at the rate then prevailing as enforcible and collectible, plus the full amount of the deferred or accumulated interest.

"(c) If said bonds are called for payment after April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus accrued interest at the rate then prevailing as enforcible and collectible, plus the full amount of the deferred or accumulated interest."

HULL, LANDIS & WHITEHAIR,
D. C. HULL,
Attorneys for Plaintiffs.

Address: DeLand, Florida

80 EXHIBIT E.

In the Circuit Court, in and for Polk County, Florida. In Chancery.

No. 21910-37-207.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Transcript of Record.

On the 23rd day of June, A. D. 1941, the Bill of Complaint was filed, in the words and figures following:

In the Circuit Court Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910-37-207. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. Bill of Complaint. Filed June 23, 1941. H. C. Pelleway, Judge. Filed in this Office Jun. 23, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law 311-12 Beymer Building, Winter Haven, Florida, For Plaintiff.

BILL OF COMPLAINT.

In the Circuit Court Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes George Andrews, Plaintiff, of Winter Haven, Polk County, Florida, and brings this his Bill of Complaint against the City of Winter Haven, a municipal corporation, of the County of Polk and State of Florida, Defendant, and for grounds of complaint says:

1. That the Plaintiff is the owner and holder for value of 100 refunding bonds of the said City of Winter Haven, Florida, issue of 1933, and is a member of the Winter Haven, Florida, Refunding Agency authorized to be created and designated as the exclusive refunding agency of said City under the terms of that certain contract made and entered into by and between the City of Winter Haven, Florida, and certain creditors of said City, dated the 16th day of May, 1933; and wherein and whereby it was contracted and agreed that the committee or agency so created to consist of three or more substantial creditors of said City, would exchange and refund the then outstanding bond indebtedness of said City for the considerations and upon the terms therein stated. A copy of said contract is hereby attached, marked Exhibit A to this Bill of Complaint and made a part hereof by reference. That said refunding agency, as fiscal agent of said City, fully performed the obligations imposed by said contract by supervising the validation of the refunding bonds of said City

issue of 1933, and procuring the owners of a large percentage of original bonds of said City to exchange such original bonds for bonds of the refunding issue of 1933.

2. That on the 7th day of October, 1940, the said City of Winter Haven entered into a new contract with Leedy, Wheeler and Company, a corporation, of Orlando, Florida, and Clyde C. Pierce Corporation, a corporation of Jacksonville, Florida, wherein and whereby the said latter named corporations were appointed fiscal agents of said City of Winter Haven to refund and exchange the outstanding bond indebtedness of the Defendant at a lower rate of interest than borne by the bonds of the refunding issue of 1933 of said City, part of which are held by your plaintiff. A copy of said contract is hereto attached, marked Exhibit B to this bill and made a part hereof by reference; that although said contract called for the issuance of approximately $2,100,000.00 of refunding bonds, the authorizing resolution passed by the City Commission of said City, provides for the issuance of $2,150,000.00 of new refunding bonds, and $2,150,000.00 of new refunding bonds have been validated by Court decree for the purposes of exchange or sale. That although said fiscal agents contracted and agreed with said City that on or before 18 months after validation of the new refunding bonds by a Court of competent jurisdiction, to furnish funds to said City by purchase of new bonds, to call all old unexchanged bonds of said City, at par of principal and accrued interest, except that portion of interest accrued under a deferred interest coupon attached to each of said bonds of the refunding issue of 1933, as aforesaid, one of which coupon is in words and figures as follows, to-wit:

"No. 61 $145.00

On the First Day of April, 1963 the City of Winter Haven, Polk County, Florida, will pay to bearer at The

Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of One hundred forty-five and no-100 Dollars ($145.00) being the then enforcible, collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "A", dated April 1, 1933, unless said bond shall have been theretofore called for redemption.

No. 702.

O. P. WARREN,
Mayor-Commissioner."

JOHN C. TERWILLIGER,
City Auditor-Clerk.

Said contract makes no provision whatever for the retirement or payment of said deferred interest coupon, although under the terms of the 1933 refunding contract aforementioned and the terms of the several refunding bonds, issue of 1933, there is accrued interest, evidenced by said deferred coupon upon each $1,000.00 bond of said issue, in the sum of $77.50, if said bond to which such coupon is attached is called on or before April 1, 1943; that a copy of one of the bonds of the refunding issue of 1933 is hereto attached, marked Exhibit C to this Bill and made a part hereof by reference.

3. That after the execution of the new contract with the new fiscal agents of said City, said City of Winter Haven levied for outstanding bonds of said City of the refunding issue of 1933, for the fiscal year 1940-41, only 15 mills on the dollar of assessed value upon all taxable property in said City as established by Chapter 11301, Acts of Florida, 1925; that although the debt service levy for the fiscal year 1940-41 of said City was made solely for the refunding bonds, issue of 1933, and by the terms of the refunding contract of 1933, aforementioned, said City is pledged to use all surplus funds levied for debt servicing

the bonds, refunding issue of 1933, above interest requirements, in the purchase or call of the bonds, issue of 1933, said City, without making any provision whatever for interest not represented by the deferred coupon accruing on bonds issue of 1933, due in October 1941, many of which may and probably will be unexchanged, and being without sufficient funds to retire such accruing interest, if the fund on hand is diverted to any other purpose, has advised the Plaintiff that said City intends to pay accrued interest on refunding bonds, issue of January 1, 1941, of said City, which will mature July 1, 1941, from debt service funds on hand and accruing from levies for the bond refunding issue of 1933; that taxes levied for each year do not become due and payable under the Charter of said City until November 1st of each year and said City has no way of raising funds to meet interest due October 1, 1941, on bonds of the refunding issue of 1933, of said City, without taking into consideration interest due on the deferred interest coupon attached to each of said bonds and accrued and retirable under the terms of the 1933 refunding contract, aforementioned, and the terms of the 1933 bonds themselves, should said bonds be called as contemplated by said City.

4. That under the terms of the 1933 contract between the Winter Haven Refunding Agency and said City, of which this Plaintiff was a member, as aforesaid, the City of Winter Haven is required to levy for refunding bonds of said City issue of 1933, the sum of $120,000.00 annually, solely for the payment of accruing interest upon and the purchase or retirement of bonds of said issue as said bonds shall severally mature; that said City has advised your Plaintiff, by and through its City Attorney, that during the fiscal year 1941-42 of said City, said City proposes to levy a tax only for the payment of interest and to create a sinking fund to pay the refunding bonds, issue of January 1, 1941, and thereafter, during each succeeding fiscal year

to levy a tax only, to create a fund for the payment of interest and principal of such new refunding bonds, and intends to make no provision, whatever, for the refunding bonds issue of 1933 of said City, unexchanged at such time; all this Plaintiff is advised and believes and, therefore, charges is in violation of the terms of the refunding contract of 1933, in this, no provision is made for retirement or payment of interest represented by the deferred coupons attached to each of the refunding bonds issue of 1933 on call of such 1933 bonds.

5. That Plaintiff is advised and believes and therefore states that said deferred interest coupon attached to each refunding bond of said City issue of 1933, is valid, and a binding obligation of said City of Winter Haven, and by the terms of the refunding contract of 1933 and the very terms of the bonds said coupons must be paid at 50% of the face amount thereof, if the bonds are called before April 1, 1943, and must be paid thereafter at a higher percentage.

6. That so long as any of the refunding bonds, issue of 1933, remain outstanding and uncalled, your Plaintiff is advised and believes and therefore charges, that said City under the provisions of the 1933 refunding contract aforementioned, is required to levy $120,000.00 yearly, and to use the proceeds when collected solely and exclusively: first, to pay interest due and accruing on the refunding bonds, issue of 1933; and, second, any surplus thereof to advertise for bids, and to purchase at the best price obtainable, bonds of said City of the issue of 1933 or to call said bonds at par and accrued interest including interest represented by the deferred coupon, until such bonds begin to mature in 1948; that any diversion of funds collected from prior levies to pay interest upon and bonds of the issue of 1933, or any failure of said City henceforth to levy $120,000.00 annually to service exclusively said refunding

bonds, issue of 1933, so long as any of said bonds remain unrttired, will constitute a violation of the 1933 refunding contract, aforementioned.

7. That your Plaintiff is advised and believes and therefore says upon information and belief, that the issues presented by the foregoing allegations vitally affect the value of this Plaintiff's presently held City of Winter Haven bonds, and under the declaratory judgment or decree Statute of this State this Plaintiff is entitled to invoke the jurisdiction of this Honorable Court for the purpose of having the Court enter its declaratory decree adjudicating and determining the hereafter stated questions before the rights of this Plaintiff are invaded by the threatened action of said City, as aforesaid, and as an act of preventive justice before irreparable damage is done this Plaintiff.

8. That the said City should be enjoined from paying from funds on hand from tax collections levied to pay outstanding bonds, any interest on bonds of the refunding issue of January 1, 1941, if any be exchanged on or before July 1, 1941, pending determination by this Court by Declaratory Decree, of the validity of the deferred interest coupons attached to each of the bonds of the issue of 1933; and should this Court find that said deferred interest coupon is valid, that said City should be enjoined and restrained permanently by this Court from paying any interest upon the bonds of the issue of January 1, 1941, from tax collections from levies made heretofore for bonds of said City issue of 1933 until every said bond of the issue of 1933 shall have been purchased pursuant to provisions of the 1933 refunding contract, or called pursuant to its provisions including provision for payment of the deferred interest coupon, or retired at maturity, with full payment of said deferred coupon according to the tenor of said bonds and the contract aforementioned; that said City should be mandatorily required to levy, so long as any of the bonds

of said City, issue of 1933, are unretired, or so long as provision has not been made on the call of said bonds, for payment of the deferred interest coupon according to the tenor of the 1933 bonds and the 1933 contract, a millage sufficient to produce the sum of $120,000.00 annually, to pay interest and create a sinking fund to retire the 1933 bonds according to the 1933 contract.

Wherefore Plaintiff Prays:

a. That the Court find that it has jurisdiction of this cause and the parties and is empowered by Statute to enter declaratory decree herein.

b. That the Court adjudicate and determine the following questions, viz:

1. Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid or invalid?

2. Under the refunding contract of 1933, will a tender by the City on call of principal, plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupons attached to the 1933 bonds, toll the running of interest on the refunding bonds, issue of 1933? And will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?

3. May the City pay interest on City of Winter Haven refunding bonds, issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were

made solely for the refunding bonds issue of 1933? And would such payment impair the contract right of this Plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds, when exchanged, be a mere continuation of the debt evidenced by the 1933 bonds in a new form, so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?

4. May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter, so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds, issue of January 1, 1941, or not,) a tax against taxable property in said City of Winter Haven, sufficient to produce the sum of $120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933?

5. May this Court enjoin the payment of interest on the January 1, 1941, issue of refunding bonds of the City of Winter Haven, accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933?

6. If said deferred interest coupon attached to the refunding bonds, issue of 1933, be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature altogether in said 1933 contract and bonds, or is such deferred coupon such a severable or separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom without affecting other

provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?

c. That said Defendant, the City of Winter Haven, be commanded to refrain and desist from paying or directing any of its officers and agents to pay interest accruing July 1, 1941, or thereafter on any bonds of the issue of refunding bonds of said City, dated January 1, 1941, pendente lite; and upon final hearing hereof that said City, its officers and agents, be commanded and enjoined to refrain and desist permanently from payingg accruing interest on said bonds, issue of January 1, 1941, from funds accruing from levies for the issue of 1933 bonds of said City heretofore made; and that said City, its officials and agents, be mandatorily commanded to henceforth pay all proceeds from debt service levies heretofore made for the 1933 bonds, aforesaid, solely upon interest of said bonds, and utilize any surplus thereof in the retirement of the principal of said bonds by advertisement and purchase, or payment at a call date or at maturity, so long as any of said issue of 1933 remain outstanding and unretired, according to the tenor and provisions of said bonds and the 1933 refunding contract; and that said City, its officers and agents, be mandatorily required by order of this Court, to hereafter levy each year upon all taxable property in said City, millage sufficient to produce the sum of $120,000.00 annually, and to apply said proceeds, when collected, solely and exclusively to the payment of the refunding bonds of said City of Winter Haven issue of 1933, so long as any of said bonds remain outstanding.

And your Plaintiff will ever pray.

H. C. CRITTENDEN,
W. H. HAMILTON,
Solicitors for Plaintiff.

91 EXHIBIT "A".

Memorandum of Agreement.

Whereas, certain creditors of the City of Winter Haven, Florida, a municipal corporation located in Polk County, have submitted to the City Commission of said City a program for refinancing all of the outstanding indebtedness of the City represented by bonds and interest coupons; and

Whereas, the City Commission of the City of Winter Haven, after due consideration of the program as outlined by certain creditors of the City, consider said plan to be a feasible and expedient plan under the circumstances and conditions as they exist; and

Whereas, it is the desire of the City Commission of the City of Winter Haven, Florida, to effectuate a refinancing plan that will lend immediate reflief to the taxpayers of the City and afford the City an opportunity to retire its outstanding bonded indebtedness without the necessity of partial refunding operations from time to time; and

Whereas, the refunding plan has been carefully considered by a citizens' committee composed of substantial taxpayers or representatives of substantial taxpayers, which committee is as follows: Percival Manchester, J. A. Dugger, W. H. Anderson, Arthur Klemm, George B. Averigg, George Andrews and A. M. Tilden; and

Whereas, the citizens' committee has recommended the program and indorsed the same; and

Whereas, the refinancing plan has submitted by certain creditors of the City seeks to accomplish the purpose desired by the City Commission:

Now, Therefore, This Indenture Witnesseth: That the City of Winter Haven, Florida (hereinafter at all times referred to as "party of the first part"), by and through its City Commission, and the creditors of the City of Winter Haven, Florida, who are a party to this agreement, as indicated by their signatures hereinafter appearing (and hereinafter at all times referred to as "party of the second part"), for and in consideration of the sum of One Hundred ($100.00) Dollars, paid by each of said parties to each of the other, and for the further consideration of the mutual benefits flowing to the parties to this agreement and to all others similarly situated, do hereby mutually covenant and agree to and with each other as follows, to-wit:

1. It is mutually understood and agreed between the parties hereto that the party of the second part does hereby agree to create a Refunding Agency to be known as "Winter Haven, Florida, Refunding Agency," (hereinafter at all times referred to as "Refunding Agency") which shall be composed of three or more substantial individual creditors of the City of Winter Haven, Florida, who shall be subject to the approval of the party of the first part.

That the Refunding Agency herein authorized to be created and established shall have exclusive authority to act in the carrying out of the refinancing plans outlined and provided for in this memorandum of agreement, unless and until otherwise mutually agreed upon by the parties hereto.

That such authority shall always be confined and limited to the following terms and conditions, viz:

2. It is further mutually understood and agreed between the parties hereto that the indebtedness of the City of Winter Haven, Florida, to be included and embraced with-

in the terms and conditions of this memorandum of agreement is approximately as follows:

Date of Issue	Amount Outstanding	Designation	Interest Rate
5 11 22	$ 50,000.00	Sewerage	6%
5 11 22	87,000.00	Street Paving	6%
5 11 22	7,000.00	White Way	6%
5 11 22	30,000.00	City Hall	6%
3 1 23	4,775.09	Improvement	6%
4 1 23	3,239.54	Improvement	6%
6 1 23	7,404.38	Improvement	6%
8 1 23	7,247.36	Improvement	6%
7 1 25	39,000.00	Funding	5½%
5 1 26	340,000.00	Paving, Series B	6%
10 1 26	166,000.00	Paving, Series C	6%
11 1 26	103,000.00	Paving, Series A	6%
2 1 27	23,000.00	Paving, Series D	6%
5 1 27	77,000.00	Refunding, Series A	6%
6 1 27	273,000.00	Capital Fund Improvement	6%
4 1 28	78,000.00	Refunding, Series B	5½%
9 1 23	62,000.00	Refunding, Series C	5½%
4 15 29	87,000.00	Refunding, Series D	6%
9 15 29	49,000.00	Refunding, Series E	6%
4 15 30	127,000.00	Refunding, Series F	6%
9 15 30	65,000.00	Refunding, Series G	6%
4 15 31	97,000.00	Refunding, Series H	6%
4 15 31	6,000.00	Refunding, Series I-1	5½%
5 1 31	61,000.00	Refunding, Series I-2	6%
6 1 31	29,000.00	Refunding, Series I-3	6%
10 1 31	56,000.00	Refunding, Series I-5	6%
11 10 31	33,000.00	Refunding, Series I-6	6%
2 1 32	4,000.00	Refunding, Series I-7	6%
3 1 32	1,000.00	Refunding, Series I-8	6%
4 15 32	2,000.00	Refunding, Series I-0	6%
Total	$1,974,666.37		

3. It is further mutually understood and agreed between the parties hereto that the party of the first part hereby agrees to authorize by appropriate resolution or ordinance, or other necessary formal action, the issuance of approximately Two Million ($2,000,000.00) Dollars in refunding bonds of the City of Winter Haven, Florida, to be known as "General Refunding Bonds, Issue of 1933," and upon the issuance of such bonds and the approval of same by reputable bond counsel, hereinafter referred to, said party of the first part hereby agrees to execute said bonds and deposit same in escrow with the ..... Bank, located in the City of ....., ... for delivery and exchange under the sponsorship and direction of the Refunding Agency to the holders of the securities of the City now outstanding and specifically referred to in the schedule of indebtedness set out above.

4. It is further mutually understood and agreed between the parties hereto that said refunding bonds shall be dated April 1, 1933, and shall mature so as to provide that each maturity of the presently outstanding bonds shall be exchanged for refunding bonds maturing on April 1st of the year nearest to fifteen (15) years from the maturity of such of the presently outstanding bonds as are exchanged therefor, it being intended that each refunding bond shall retain relatively the same position in the debt structure of the City of Winter Haven as the presently outstanding bonds exchanged therefor provided, however, that no maturities of the refunding bonds shall extend over thirty (30) years from date of issue; and provided further, that all maturities of April 1, 1933, and prior thereto, whether of principal or interest, shall be exchanged for refunding bonds of the City of Winter Haven maturing on April 1, 1948.

5. It is further mutually understood and agreed between the parties hereto that as and when the presently outstanding bonds of the City of Winter Haven, Florida, are surrendered to the escrow agent, the holders thereof shall be entitled to receive in exchange therefor a like principal amount of refunding bonds. At the time of such exchange the accrued interest on the bonds so exchanged shall be adjusted as of April 1, 1933, and in such adjustment the holders of interest coupons and the holders of matured bonds entitled to accrued interest thereon which is not evidenced by interest coupons, shall be entitled to receive a like principal amount of bonds for such interest coupons and accrued interest which is not evidenced by interest coupons, on a par basis of exchange, less such payments in cash on interest as may be made at the time of the exchange. In the issuance of the refunding bonds herein provided for, it is agreed that adequate provision will be made to effect an adjustment of past due and accrued interest on the securities to be refunded, and that at the time of the exchange of the refunding bonds for the bonds for the presently outstanding bonds an adjustment of accrued interest will be made which shall be satisfactory to the parties hereto, party of the first part agreeing to use all available cash in the interest and sinking fund for such purpose.

6. It is further mutually understood and agreed between the parties hereto that all refunding bonds herein authorized shall bear interest, payable semi-annually, at the following rates: Three and one-half per cent. (3½%) per annum for the first two years from the date of the bonds; four per cent. (4%) per annum for the next succeeding year; four and one-half per cent. (4½%) per annum for the next succeeding year; five per cent. (5%) per annum for the next six years; and six per cent. (6%) per annum after ten years from the date of the bonds, until the maturity of the bonds. Provided Always that no refund-

ing bond herein provided for shall bear interest at a rate greater than the rate of interest borne by the bond for which such refunding bond is exchanged.

That each bond shall have attached thereto a non-interest bearing, non-detachable certificate or coupon representing the difference, from the date of the refunding bonds to the date of maturity, between the rate of interest on the presently outstanding bonds and the rate of interest earned on the refunding bonds exchanged for the presently outstanding bonds of the City (which earned interest is hereinafter at all times referred to as "deferred interest.")

That all of said refunding bonds shall be callable at par, plus accrued interest, plus one-half of the deferred interest, upon any interest payment date on or prior to ten years from the date of the bonds; and shall be callable at par, plus accrued interest, plus three-fourths of the deferred interest, on or prior to two years before the maturity of the respective bonds during the second ten-year term of the bonds; and shall be callable at par, plus accrued interest, plus the full deferred interest during the last ten years of the thirty-year term of the bonds; provided, that at the respective dates of maturity all bonds shall be payable at par, plus the full deferred interest.

That the option to call bonds of this issue prior to maturity, if used, shall be exercised in the following manner:

The bonds to be called shall be drawn by lot from the next succeeding definite maturity, and notice of such redemption, specifying the bonds to be redeemed, shall be filed at the place of payment of the principal and interest of said bonds at least thirty (30) days prior to such redemption day, and notice of intention to redeem said bonds shall be published at least once in at least two newspapers of general circulation, one of which newspapers

shall be printed and published in Winter Haven, Florida, and the other in the City of New York, New York.

7. It is further mutually understood and agreed between the parties hereto that for the purpose of adequately providing for the payment of the interest coupons and for the creation and maintenance of a sinking fund for the retirement of all said refunding bonds, the proceedings authorizing the issuance of said refunding bonds shall conform to the tax provision requirements of such laws of Florida providing for the refunding of indebtedness as shall be approved by the attorneys who pass upon the validity of the refunding bonds to be issued.

That such proceedings authorizing the issuance of the refunding bonds shall contain enforceable and effective obligations and covenants on the party of the party of the first part to and in favor of the holders of the refunding bonds, that in the annual budget and ad valorem tax levy to be prepared and made in each of the years A. D. 1933 to A. D. 1963 inclusive, there shall be included a levy of an ad valorem tax upon all the taxable property in the City in an amount to aggregate annually not less than the amounts shown opposite the respective years in the following schedule:

Year	Amount of Levy
1933 to 1934, both inclusive	$105,000.00
1935	110,000.00
1936	115,000.00
1937 to 1963, both inclusive	120,000.00

That such tax shall be levied and computed upon the extended and finally equalized valuation of all the taxable property of the City of Winter Haven, Florida, provided, however, that the party of the first part hereby reserves the right to reduce said annual levies set out in the

schedule above by the equivalent of six per cent (6%) on the principal amount of any bonds retired, from any source other than from the proceeds of said above described annual pledges, after the execution of this contract; provided, further, however, that such reductions from the specified tax levies shall not be effective during the first four years of the terms of the refunding bonds, except as to any retirement of the present principal indebtedness of the party of the first part from the designated sources, from the date of this contract to the date of preparing the budget in the years indicated, above the amounts shown in the following schedule:

Year	Total Retirement Before Reduction in Levies Effective
1933	$250,000.00
1934	250,000.00
1935	167,000.00
1936	84,000.00

(Example: If the City has retired $167,000.00 of bonds of the City before adopting the annual budget in 1935 from sources other than the proceeds of the special tax levies to support the refunding bonds, as hereinafter described, taking into consideration accumulated retirements from the date of this contract to the date of adopting the budget in 1935, then the City may reduce the annual tax from the contract figures of $110,000.00 by the equivalent of 6% on an excess retirement over and above said $167,000.00).

If during any year the City realizes in cash from revenues pledged to the interest and sinking fund under the provisions of this contract, a sum in excess of such annual interest and sinking fund pledges, then and in that event such excess over and above such pledges may, at the option of the City Commission, be used, according to the contract, for the purchase of additional bonds, or may be

carried over to the next succeeding budget and credited against the next year's requirements, and the tax levy reduced in a similar amount.

That the party of the first part, in determining the amount of millage to be levied for and during the first five (5) years of this program, may assume that the tax collections for each current year during such period will be one hundred percent. (100%); that for and during the remaining term of the refunding program, the party of the first part, in determining the amount of millage to be levied for each year, agrees to assume that the percentage of tax collections for the current year under consideration will not exceed the average percentage of collection of ad valorem taxes for the last past three tax collection years immediately preceding the tax year for which the levy is being made.

That the party of the first part further agrees to levy each year from the sixth to the tenth years of this program, inclusive, one-fifth of any amount less than the total of the first five years' levies which has actually been received from such levies and paid into the interest and sinking fund account of the issue of bonds provided for herein during the first five years of the program.

Provided, however, that at all times during this program, the party of the first part, in determining the levy to be made for the ensuing year's interest and sinking fund requirement, shall provide and make a sufficient levy to pay the interest and principal maturities of the year for which the budget and levy is being made and prepared.

Subject to the provisions of Section 15 hereof, it is agreed that any of such revenues and income, after interest and principal maturities for the current year have been provided for or set aside, shall be used to reimburse party

of the second part the expense of this refunding program. After such expense has been paid, all such revenues and income received, allocated, or made available, shall be considered as surplus and used exclusively for the purpose of retiring said bonds under the provisions of this agreement.

8. It is further mutually understood and agreed between the parties hereto that any and all revenues and income of the City now or hereafter derived from sources other than ad valorem taxes, and not otherwise specifically appropriated by law for other purposes (excluding revenue and income from special assessments, city owned real property, and present operating revenues from sources other than ad valorem taxes, or their future substitutes), shall be pledged to the payment of the refunding bonds herein authorized; and when such revenues and income are received, allocated, or made available, they shall be placed in the interest and sinking fund account for said refunding bonds and shall not be used or appropriated for any purpose other than in the payment of interest to accrue from time to time on said refunding bonds, and for the retirement of said refunding bonds as provided in this agreement; it being understood and agreed between the parties hereto that upon receipt of any such revenues and income from newly created sources and the application of the same as herein provided, such revenues and income shall be credited against the next ensuing budget requirement for the interest and sinking fund of the refunding bonds authorized herein, and the tax levy decreased accordingly.

That all cash receipts from the collection of delinquent taxes which were levied for interest or principal of the bonds to be refunded under this program, and all cash receipts now or hereafter collected from the special assessments heretofore made against property abutting public improvements and primarily pledged to retire the

interest and principal of certain of the bonds authorized to be refunded in this program, and the cash income and revenues now or hereafter received from real property of the party of the first part now or hereafter to be acquired, shall be and the same are hereby pledged to the payment of the interest and principal of the refunding bonds herein authorized, and upon the receipt of any of such funds from any of the sources hereinabove specifically referred to in this paragraph, such receipts shall be placed in the interest and sinking fund account for said refunding bonds herein authorized, and shall be used for the retirement of said interest and bonds under the provisions of this agreement, and shall supplement the annual tax levies provided for herein.

That the governing authority, for and on behalf of the party of the first part, will use its best efforts to enforce collections of all past due ad valorem taxes and special assessments as rapidly as possible, under such plan of operation as the governing authority of the party of the first part shall consider adequate, to the end that said past due ad valorem taxes and special assessments shall be liquidated as expeditiously as possible, considering the best interests of the party of the first part and its creditors.

9. It is further mutually understood and agreed by and between the parties hereto that if at any time there is a surplus of Five Thousand ($5000.00) Dollars, or more, in the refunding interest and sinking fund account, such surplus shall be used by the governing authority of party of the first part for the purpose of purchasing refunding bonds of the issue contemplated herein, provided such purchases do not impair the ability of the City to meet the interest and principal payments as they become due, in the discretion of the governing body of party of the first part.

That purchases herein provided for shall be made in the following manner:

The governing authority of party of the first part shall designate a date which shall be not less than thirty nor more than sixty days from the time such date is designated, at which time the governing authority will receive sealed tenders of bonds of the refunding issue contemplated herein, and act upon such tenders in open session. Upon determining said date the governing authority shall notify the Refunding Agency and any bondholder so requesting. Notice of the time and place of receiving such tenders shall be published once, at least thirty days before said time, in at least two newspapers published and having a general circulation, one of which newspapers shall be published in Winter Haven, Florida, and the other in the City of New York, State of New York. The entire available surplus for the retirement of bonds shall be used to purchase bonds offered at the lowest prices; provided, however, that if the governing authority of party of the first part shall be dissatisfied with any or all tenders received, then it shall have the option of rejecting any or all such tenders, and within sixty days of such rejection it shall re-advertise for additional sealed tenders, and upon such second re-advertisement the governing authority shall accept bonds so tendered until all of the funds available shall have been used in the purchase thereof as provided in this paragraph; provided, further, however, that if no offers are received at or less than the then callable price, the governing authority shall reject all offers and proceed to call bonds by lot, as hereinabove set out; and provided, further, that during the first eight years of the operation of this program the party of the first part shall accept the lowest offerings, based on the par value, and thereafter the City shall have the option to accept the lowest offerings, based on the par value or based on the income yield to maturity, taking

into consideration the deferred interest value of the bonds if not redeemed prior to maturity.

10. It is further mutually understood and agreed between the parties hereto that for and during the term of the refunding bonds herein authorized, all ad valorem taxes shall be payable in cash only.

11. The party of the first part further agrees that if the annual budget of appropriations of party of the first part (except debt service requirements) is exceeded during any year while any of the refunding bonds herein authorized are outstanding and unpaid, that the general funds of the party of the first part will for such year be chargeable the next ensuing year with an amount equal to such excess expenditures, and such amount will be taken from the general fund and placed in the interest and sinking fund for the refunding bonds herein authorized, and will not be considered a part of the respective annual requirements hereinabove described.

12. The party of the first part hereby agrees to take all proceedings deemed to be necessary in carrying out the refinancing program herein authorized, to the end that the bonds to be issued will be general obligations of the City of Winter Haven, Florida, and contain a pledge of the full faith and credit of the City for the prompt payment of the principal and interest on said refunding bonds according to their tenor.

13. It is further mutually understood and agreed that if at any time before or after any or all of the refunding bonds shall have been authorized or issued, it shall be deemed advisable or necessary in the opinion of legal counsel that an Act or Acts of the Legislature of Florida should be enacted governing this program, or any part

hereof, the governing authority will support and request the enactment of any such law or laws.

14. Party of the second part hereby agrees to obtain from the Refunding Agency to be established, an agreement in favor of party of the first part in and by which said Refunding Agency agrees and obligates itself to defray all expenses in assembling the bonds proposed to be refunded and in the preparation of the refunding bonds, and in representation of party of the first part in the validation of said bonds and subsequent approval thereby by counsel. In obtaining legal representation for these purposes, party of the second part agrees that the Refunding Agency will engage the services of either Calwell and Raymond, bond attorneys of New York City, or Chapman and Cutler, bond attorneys of Chicago, Illinois, and Henry L. Jolfay, City Attorney of Winter Haven, with Francis P. Whitehair, of Deland, Florida, as associate counsel, provided an agreement can be reached with these lawyers and the Refunding Agency as to their fees and compensation for such services to be performed by them in carrying out the purposes of this refunding program; but if, however, an agreement as to compensation and fees cannot be reached, then and in such event the Refunding Agency shall be entitled and privileged to engage other counsel to approve the refunding bonds and carry out the legal proceedings necessary with respect to this refunding program.

15. Said party of the first part hereby agrees to reimburse the Refunding Agency for its expenses incurred in carrying out this refunding program by paying to it two per cent. (2%) of the par value of all bonds exchanged hereunder from the first funds available to the City each year after interest for the current year has been provided for or set aside, until the two per cent (2%) herein agreed upon has been fully paid; provided that for the first three years of the program the amount to be paid to the Refund-

ing Agency to reimburse its expenses in carrying out this refunding program shall not exceed Thirteen Thousand Three Hundred and Thirty-three ($13,333.00) Dollars in any one year; and provided further that said Refunding Agency shall not charge or receive from any bondholder or other party any other or additional remuneration for its said services and expenses.

16. It is further mutually understood and agreed between the parties hereto that the Refunding Agency herein provided for shall determine whether or not it is feasible to effectuate the refinancing plan herein outlined should it be impossible to assemble all of the outstanding indebtedness particularly set forth above; provided, however, that party of the first part is in no wise obligated to perform under the terms of this agreement unless seventy-five per cent (75%) of the outstanding bonds hereinabove referred to have been assembled for the purpose of this agreement. In the event the Refunding Agency determines that it is not feasible to effectuate the refinancing plan herein outlined, then and in such event all expenses and costs incurred by the Refunding Agency in the assembling of the bonds, or the performance of any other of the conditions of this agreement shall be borne by the Refunding Agency, and party of the first part will in no wise be responsible or obligated to pay any of such costs and expenses, and the Refunding Agency, in its agreement to defray such expenses as herein provided, shall also consent to the obligations and conditions of this provision of the agreement.

17. It is further mutually understood and agreed between the parties hereto that the parties to this agreement will jointly use their best efforts in inducing present holders of the presently outstanding bonds of party of the first part to participate in the refinancing program; and, until otherwise mutually agreed between said parties, the plan as herein set forth shall constitute the exclusive refinanc-

ing program for said party of the first part. Whenever, and as ofter as the Refunding Agency shall request in writing to be informed as to the financial affairs of the party of the first part, such as the amount of tax levies, collections or delinquencies, the amount of outside revenues and income, the amount of bonds issued, outstanding or retired, or the status or amount of interest or sinking fund, the party of the first part agrees promptly to furnish such information and to give due consideration and credence to any recommendation of the Refunding Agency with regard to such financial affairs.

18. It is further mutually understood and agreed that after five (5) years from the date of this contract the Refunding Agency herein agreed to be created shall be dissolved and its power and authority shall cease and determine; provided, however, that if any portion of the two per cent. (2%) compensation herein provided for shall not have been paid at said time, then and in that event the Refunding Agency shall continue in existence for the purpose of collecting any such balance in accordance with the terms of this contract.

19. It is expressly agreed by the parties hereto that any act of the governing authority of party of the first part conflicting with any of the terms of this agreement done or performed under the order of any Court of competent jurisdiction, shall not be considered as a breach hereof, or of any of the terms hereof; provided, that if such order shall interfere with the reasonable operation of this contract, then the refunding agency shall have the option to refuse to proceed further in carrying out the program contemplated herein.

20. It is further agreed by the parties hereto that either party to this contract reserves the right to advise the other party at any time within thirty (30) days after the ad-

journment of the 1933 regular session of the Legislature of the State of Florida, that such party does not care to proceed with its undertaking under the contract due to complications resulting exclusively from Legislative action.

In Witness Whereof, the party of the first part has caused this agreement to be executed in duplicate in its corporate name, under due corporate authority, by proper resolution, and to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk, with the corporate seal of party of the first part duly affixed; and the parties of the second part have duly executed this instrument under seal, as of this 16th day of May, A. D. 1933.

CITY OF WINTER HAVEN, FLORIDA,
By O. P. WARREN,
(Seal) Its Mayor-Commissioner, Party of the first part.
(Seal) R. E. CRUMMER,
(Seal) GEORGE W. SIMMONS, JR.,
Parties of the second part.

Attest:
JOHN C. TERWILLIGER,
Its City Auditor and Clerk.

100 EXHIBIT "B".

Agreement.

This Agreement made and entered into this 7th day of October, A. D. 1940, by and between Leedy, Wheeler & Co., a Florida corporation, and Clyde C. Pierce Corporation, a Florida corporation, (hereinafter sometimes referred to as "First Party" and sometimes referred to as "Fiscal Agent"), and the City of Winter Haven, Florida, a muni-

cipal corporation created and existing under the Constitution and laws of the State of Florida (hereinafter sometimes referred to as "Second Party" and sometimes referred to as "City").

Witnesseth:

In consideration of the sum of One ($1.00) Dollar paid by each of the parties hereto to each other, the receipt of which is hereby mutually acknowledged, and in further consideration of the mutual benefits flowing to the respective parties hereto, it is hereby mutually understood and agreed:

Section I. That the First Party shall be appointed Fiscal Agent of said City and shall endeavor to accomplish a refunding, by an exchange of new One Thousand ($1,000.00) Dollar refunding bonds for each One Thousand ($1,000.00) Dollars of the City's indebtedness it is agreed to be refunded. This shall amount to approximately Two Million One Hundred Thousand ($2,100,000.00) Dollars, or such amount as shall be necessary to fund into bonded indebtedness all of the principal indebtedness now evidenced by bonds and judgments, and also such past due interest as may be determined to be necessary. It is the purpose of this section to provide for all of the financing contemplated and found to be necessary during the period of time covered by this contract.

Section II. That Second Party shall by proper action cause refunding bonds to be authorized and validated by the Circuit Court in and for Polk County, Florida, or the Supreme Court of Florida, in the event of any appeal, in an amount sufficient to bring an exchange of bonds on the basis of a One Thousand ($1,000.00) Dollar bond for each One Thousand ($1,000.00) Dollars of such indebtedness, using such procedure and forms therefor as shall be approved

by nationally recognized bond attorneys. Said refunding bonds shall be executed in the manner required by law and placed in deposit in escrow in a bank designated by the First Party to be delivered in exchange for said outstanding indebtedness contemplated by this contract, this contract being sufficient authority for said officials to make such deposits for the purpose above specified.

Section III. That said refunding bonds shall be dated as mutually agreed upon, in any event not later than January 1, 1941, and shall mature serially in amounts as may be permitted under an allocation not less than One Hundred Twenty-four Thousand ($124,000.00) Dollars per annum and not to exceed One Hundred Twenty-six Thousand ($126,000.00) Dollars per annum for both principal and interest. Interest shall be payable semi-annually and both principal and interest payable at a bank in New York City or at the option of the holder at the Florida National Bank of Jacksonville, Jacksonville, Florida, or at the office of the City Treasurer of the City of Winter Haven, Fla., and said bonds shall bear interest as follows: First maturing one-third (1/3) at four per centum (4%) per annum, next maturing one-third (1/3) at four and one-fourth per centum (4¼%) per annum, the last maturing one-third (1/3) at four and one-half (4½%) per centum per annum, the 1st fifty (50%) per cent of said bonds shall be callable at par and accrued interest on or after the 1st day of July A. D. 1955, provided however, that the last maturing One Hundred Fifty Thousand ($150,000.00) Dollars of said bonds shall be callable on any interest payment date upon thirty (30) days notice by publication in a financial journal published in New York City.

Section IV. First Party as Fiscal Agent of said City is to have the exclusive privilege of arranging for exchange of said new refunding bonds for the indebtedness contemplated to be refunded for a period beginning at the

date of execution hereof and running up to a date within ten (10) days prior to such date as new refunding bonds may be advertised for public sale, which date shall not in any event be more than eighteen (18) months after the entry of the validation decree. In said exchanges the First Party shall have the option as to maturity of new refunding bonds allocated for exchange. It is the intention of Second Party that at the expiration of said period above allowed for exchange to advertise for sale and sell upon sealed proposals all bonds of said new refunding issue which shall not have been issued for exchange during said period. First Party hereby agrees that at such public sale it will submit a proposal conforming to the terms of the notice of sale and agrees to pay not less than par plus accrued interest, if any, for all of said unexchanged new refunding bonds.

Section V. That said Second Party shall take such action as may be necessary to consummate the refunding program herein authorized and agrees that the proceedings authorizing the issuance of new refunding bonds or the new refunding bonds themselves, or both, shall provide for said new refunding bonds to be general obligations of the Second Party, containing a pledge of the full faith and credit of the issuing taxing unit, including homesteads, for the prompt payment of the principal of and interest on said new refunding bonds according to their tenor; provide for payment in legal tender of the United States of America of all taxes provided to be necessary for the payment of the principal of and interest on said refunding bonds; provide for said refunding bonds to be continuations, extensions, mergers and renewals of the original bonds and other indebtedness provided to be refunded and the obligations evidenced thereby; provide for all rights and remedies which were available by contract for the support and enforcement of the original bonds and other indebtedness proposed to be refunded and the obligations evidenced

thereby will continue and remain available for the support and enforcement of the new refunding bonds issued in lieu thereof; and provide that in the event said refunding bonds or any term, provision, condition, agreement or clause therein shall be held for any reason whatsoever either invalid or unenforcible; then the holder of the refunding bond effected thereby shall be subrogated to any and all rights and remedies which at any time existed in favor of the holders of any bonds thereby refunded. Said new refunding bonds and the terms thereof are to be approved as to legality by nationally recognized bond attorneys.

Section VI. First Party as Fiscal Agent of said City shall receive as its compensation an amount equal to one and three-fourths (1-3/4%) per cent of the par value of all new refunding bonds validated and exchanged as hereinbefore provided, and two and one-fourth (2¼%) per cent of the par value on the additional refunding bonds validated and for which it shall submit a bid pursuant to Section IV hereof provided that the compensation first mentioned shall be due as bonds are exchanged in multiples of One Hundred Thousand ($100,000.00) Dollars, and that the compensation last mentioned shall be due and payable only after said bonds have been taken up and paid for by the successful bidder.

Section VII. First Party agrees to pay certain expenses incident to the issuance of new refunding bonds, including printing the bonds and the cost of approving opinion of the nationally recognized bond attorneys; further the First Party is to bear the expense incident to contacting and circularizing the bond holders in an effort to secure exchanges as herein outlined. It is understood, however, that the parties hereto will jointly use their best efforts to induce a holder of the presently outstanding bonds and other evidences of indebtedness to be refunded hereunder, and included within the scope hereof, to participate in the re-

funding program set forth herein, and until otherwise mutually agreed upon the plan herein set forth shall constitute the exclusive refunding program for said Second Party.

Section VIII. That whenever and as often as First Party shall request in writing to be informed as to the financial affairs of the Second Party such as the amount of tax levy, collection, delinquency, the amount of revenue and income available from sources other than from ad valorem taxes, the amount of bonds issued, outstanding or retired, or the status or amount of interest of sinking fund, Second Party agrees to furnish such information promptly and to give due consideration to any recommendations of the First Party in regard to such financial affairs.

Section IX. It is mutually understood and agreed that in the event the United States of America shall become involved in war during the period of time covered by this contract then this contract shall become subject to cancellation at the option of either parties.

In Witness Whereof First Party has executed this instrument in duplicate under its hand and seal and Second Party has caused this instrument to be executed in duplicate in its name under due authority and has caused the same to be signed by the Mayor-Commissioner of the City of Winter Haven and the seal of said City to be duly affixed hereto, attested by the City Auditor and Clerk of said City, all as of the 7th day of October, A. D. 1940.

LEEDY, WHEELER & COMPANY.

By L. C. LEEDY,
President.

Attest:
M. E. WELLER,
Asst. Secretary.

(Seal Leedy-Wheeler & Co.)

CLYDE C. PIERCE CORPORATION.
By C. C. PIERCE,
President.

Attest:
OLIVE BOOTE,
Secretary.

(Seal Clyde C. Pierce Corporation.)

Adopted and confirmed by Resolution of City Commission of Winter Haven, Florida.

CITY OF WINTER HAVEN, FLORIDA.
By E. S. HORTON,
Mayor-Commissioner.

Attest:
O. R. WAY,
City Auditor and Clerk.

(Seal Winter Haven, Fla.)

105 EXHIBIT "C".

No. 702 $1000

United States of America,
State of Florida, County of Polk.

City of Winter Haven
General Refunding Bond Issue of 1933,
Series A.

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of

One Thousand Dollars

on the first day of April, 1963, with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender of the attached coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the United States of America at The Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same become due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amounts of this bond as evidenced by the interest coupons hereto attached shall be enforcible

and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of four per cent per anunm from and including April 1, 1935 to April 1, 1936; at the rate of four and one half per cent per annum from and including April 1, 1936 to April 1, 1937; at the rate of five per cent per annum from and including April 1, 1937 to April 1, 1943; and at the rate of six per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of six per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforcible, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforcible and collectible plus one-half of the deferred or accumulated interest for ten years;

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforcible and collectible plus three-fourths of the deferred or accumulated interest for ten years;

From April 1, 1953 to and including April 1, 1963 at par, accrued interest at the rate then prevailing as enforcible and collectible plus the full deferred or accumulated interest for ten years;

However, at maturity this bond shall be payable at par plus the full amount of deferred interest which in this

case shall be par, accrued interest at the rate then prevailing as enforcible and collectible and the full deferred interest being One Hundred Forty-five Dollars.

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of six per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter, and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven, duly and legally adopted and taken.

And It Is Hereby Certified and Recited that all acts, conditions and things required to be done precedent to and in the issuance of said bonds have been properly done, happened and been performed in regular and due form as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refund-

able, constitutional, subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded for this series of bonds, together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that before the issuance of this bond, provision has been made for the levy and collection of a tax upon all the taxable property within said City of Winter Haven, which, together with other applicable revenue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven has caused this bond to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with the facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk which officials by the execution of this bond do each adopt as and for his own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

O. P. WARREN,
Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:
JOHN C. TERWILLIGER,
City Auditor and Clerk, City of
Winter Haven, Florida.

And on the reverse side appears:

Number
702

United States of America.

State of Florida,
County of Polk.

City of Winter Haven
General Refunding Bond
Issue of 1933.
Series A

$1000

Dated April 1, 1933

Due April 1, 1963

Optional any interest paying date

Interest 3½ per cent from date to April 1, 1935;

Interest 4 per cent from and including April 1, 1935 to April 1, 1936;

Interest 4½ per cent from and including April 1, 1936 to April 1, 1937;

Interest 5 per cent from and including April 1, 1937 to April 1, 1943;

Interest 6 percent from and including April 1, 1943, to maturity.

Interest payable semi-annually on the First days of April and October of each year.

Both principal and interest payable at the office of Central Hanover Bank and Trust Company of New York in the City of New York, New York.

Validated and confirmed by decree of the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Polk County, rendered on the 8th day of September, 1933.

J. D. RAULERSON,
Clerk of the Circuit Court of
Polk County, Florida.

On the 23rd day of June, A. D. 1941, the Answer of Defendant was filed, in the words and figures following:

No. 21910-37-207. In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. Bill for Declaratory Decree and Other Relief. Answer of Defendant. Filed June 23, 1941. H. C. Pelleway, Judge. Filed in this office Jun. 23, 1941. D. H. Sloan, Jr., Clerk Circuit Court. Henry Sinclair, Attorney at Law, Winter Haven, Florida.

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110 ANSWER OF DEFENDANT.

In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,
vs. =2190-37-207.
City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Comes now the City of Winter Haven, a municipal corporation, of the County of Polk and State of Florida,

defendant in the foregoing cause, and for answer to the Bill of Complaint herein filed, says:

1. The defendant admits the plaintiff is the owner and holder, for value, of refunding bonds of the City of Winter Haven, issue of 1933, and admits that the plaintiff was a member of the Winter Haven Refunding Agency authorized to be created in that certain contract entered into by and between the City of Winter Haven and certain creditors, dated the 16th day of May, A. D., 1933. The defendant further admits that the Winter Haven Refunding Agency, as fiscal agent of the City, supervised the validation of the refunding bonds of the City, issue of 1933, and procured a large percentage of the original bondholders of the City to exchange original bonds for bonds of the refunding issue of 1933.

2. Answering paragraph 2 of the said Bill of Complaint, defendant admits that the City entered into a contract with Leedy Wheeler and Company, a corporation, of Orlando, Florida, and Clyde Pierce Corporation, a corporation, of Jacksonville, Florida, wherein and whereby said corporations were appointed fiscal agents of the City of Winter Haven to refund and exchange the outstanding bond indebtedness of the defendant and it admits that no provision was made therein to pay interest represented by a deferred interest coupon attached to each of the refunding bonds, issue of 1933, upon call of said bonds, and admits provision only has been made in the contract aforementioned to provide funds to call the refunding bonds of the City issue of 1933, at par, plus accrued interest, except such accrued interest as may be represented by said deferred interest coupons attached to said bonds of the City issue of 1933.

Further answering said Bill of Complaint, this defendant says that said deferred coupons attached to each and

every of the bonds of the said City, being refunding bonds issue of 1933, are void and unenforceable; that said refunding bonds, issue of 1933, constitute nothing more than an extension of the original obligation or bond debt of the City of Winter Haven under the same taxing power as was pledged to the payment of the original bonds and that in and by the contract of 1933 under which said bonds were refunded provision was made for refunding the entire bond indebtedness of said City of Winter Haven, including all accrued interest and such bond indebtedness plus all accrued interest was brought forward and refunded by said refunding bonds, issue of 1933, except a small percent held by owners who refused to exchange original bonds or judgments based thereon, although refunding bonds were provided for exchange by the City for such unrefunded indebtedness; that the deferred interest coupon set forth and described in plaintiff's Bill of Complaint and attached to each of the bonds of the issue of 1933, aforementioned, covers and represents the difference in interest rate between the original bonds of said City of Winter Haven and the interest rate of the refunding bonds, issue of 1933, payable during earlier years of the life of said refunding bonds, resulting in the rate of the refunding bonds, issue of 1933, with said deferred interest coupon attached and made a part thereof and provision made for the payment thereof, being the same as that borne by the original bonds of said City of Winter Haven refunded thereby; that in and by said refunding contract of 1933, the said City of Winter Haven agreed to pay the Winter Haven Refunding Agency the sum of two (2%) per cent of the bond indebtedness exchanged by such agency, for its service as fiscal agent in and about supervising and procuring validation of the refunding bonds, bond attorneys' approval, etc., and exchange of the bonds, and a large percentage of the bonds having been exchanged, the said City of Winter Haven

paid to said Winter Haven Refunding Agency or its successor in interest the full fee or compensation to which said agency thereby became entitled, viz., the sum of Thirty-five Thousand One Hundred ($35,100.00) Dollars; that by reason thereof, there was added to the entire existing bond indebtedness of the City of Winter Haven, the fees or compensation paid to the fiscal agent, aforementioned, or its successor in interest, by and under the 1933 refunding contract, without a referendum being had as required by Section VI of Article 9, of the Constitution of the State of Florida, and such refunding bonds, issue of 1933, approved by freeholders entitled to vote in said election and without the municipality and its tax payers receiving even a concession on the interest rate borne by the original bonds; and said deferred coupon attached to each and every of the refunding bonds, issue of 1933, of said City of Winter Haven, became and is void, unenforceable and unconstitutional.

3. Answering paragraph 3 of said Bill of Complaint this defendant admits that it levied only fifteen (15) mills on the dollar of assessed value of all taxable property in said City as established by Chapter 11301, Acts of Florida, 1925, for the fiscal year 1940-41 of said City, to pay outstanding bonds of the City of the refunding issue of 1933, and admits that by the terms of the refunding contract of 1933, the City is pledged to use all surplus funds, above interest requirements, in the purchase or call of bonds, issue of 1933, or retirement of same when due and admits that it intends to pay accrued interest on refunding bonds, issue of January 1, 1941, of said City which will mature July 1, 1941, from debt service funds now on hand or which may accrue before July 1, 1941, in said fund from levies heretofore made for bonds of the refunding issue of 1933 of said City; further answering said paragraph this defendant admits that taxes

do not become due and payable under the Charter of the City until November 1st of each year and admits that the City has no way of raising funds to meet interest due October 1, 1941, on bonds of the refunding issue of 1933, except from levies heretofore made for bonds of the issue of 1933 of said City. Further answering said paragraph, this defendant says that the refunding bonds, issue of January 1, 1941, of said City, which have heretofore been validated and are now being printed preparatory to exchange for outstanding bonds of said City, are merely an extension of the original bond indebtedness of the City as evidenced by the refunding bonds, issue of 1933, or any prior bond which may not have been exchanged for said bonds, issue of 1933, and that payment of interest upon such bonds, issue of January 1, 1941, which shall have been exchanged on or before July 1, 1941, will constitute a payment upon the bond indebtedness of the City of Winter Haven and payment upon the debt evidenced by the refunding bonds, issue of 1933, in a new form, but at a lower rate of interest.

That the said plaintiff and other bondholders of the City of Winter Haven Refunding Bonds, issue of 1933, will be benefited by payment of interest on the bonds, issue of 1941, in July 1941, at a lesser rate of interest which shall have been exchanged on that date.

4. Answering paragraph 4 of said Bill of Complaint, the defendant admits that under the 1933 contract, aforementioned, the City of Winter Haven is required to levy annually a sufficient millage to produce the sum of One Hundred Twenty Thousand ($120,000.00) Dollars annually solely for the payment of accruing interest upon, and the purchase, call or retirement of bonds of the issue of 1933 of said City, as same shall severally mature. Further answering said paragraph this defendant admits that it

has advised the plaintiff by and through its City Attorney that during the fiscal year 1941-42, the City proposes to levy a tax only for the payment of interest and to create a sinking fund to pay the refunding bonds, issue of January 1, 1941, of said City, and intends thereafter in each succeeding fiscal year, to levy a tax only for the payment of interest and principal of refunding bonds, issue of 1941, and intends to make no provision whatever for the refunding bonds, issue of 1933, of said City, but this defendant denies that a refusal to levy a tax for the refunding bonds, issue of 1933, during the fiscal year 1941-42, of said City, or subsequent years, will be a violation of the refunding contract of 1933; on the contrary, this defendant says that provision is made in the new contract with the new fiscal agents, dated October 7, 1940, for the call of all outstanding bonds of said City at par and accrued interest, except the deferred interest coupon attached to said refunding bonds, issue of 1933; that said deferred interest coupon is void and unenforceable, as hereinbefore set forth, and said City is without power and authority to pay such deferred coupon.

5. Answering paragraph 5 of said Bill of Complaint, this defendant denies that the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, is valid, and a binding obligation of this defendant, and says that said coupon should not be paid at fifty (50%) per cent of the face amount thereof or at any other percentage thereof.

6. Answering paragraph 6 of said Bill of Complaint, this defendant admits that proceeds from the annual levies provided for by the 1933 contract were to be used solely to pay interest accrued on the refunding bonds, issue of 1933, and to advertise for bids and purchase at the best price obtainable bonds of said City, issue of 1933, or

call said bonds at par and accrued interest including interest represented by the deferred coupon, until such bonds begun to mature in 1948, but this defendant denies that a diversion of any part of the funds collected from prior levies to pay interest upon and retire bonds of the issue of 1933 or failure of the City henceforth to levy One Hundred Twenty Thousand ($120,000.00) Dollars annually to service exclusively said refunding bonds, issue of 1933, so long as any of said bonds remain unrefired, will constitute a violation of the 1933 refunding contract between the Winter Haven Refunding Agency and the said City of Winter Haven.

7. Answering paragraph 7 of said Bill of Complaint, this defendant admits that the issues presented by plaintiff's Bill will vitally affect the value of plaintiff's bonds, and admits that the plaintiff is entitled to invoke the jurisdiction of this Court for the purpose of having the Court enter a Declaratory Decree upon issues raised by plaintiff's Bill.

8. Answering paragraph 8 of said Bill of Complaint, this defendant denies the right of the plaintiff to have an injunction, as stated in said paragraph.

HENRY SINCLAIR,
Solicitor for Defendant.

On the 23rd day of June, A. D. 1941, the Motion for Decree on Bill and Answer was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. 21910-37-207. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. Motion for Decree on Bill and Answer. Filed

June 23, 1941. H. C. Pelleway, Judge. Filed in this office Jun. 23, 1941, D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, for Plaintiff.

119 MOTION FOR DECREE ON BILL AND ANSWER.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,
vs. =21910-37-207.
City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes the Plaintiff, George Andrews, and moves the Court for a decree on the Bill of Complaint and the Answer of the Defendant to said Bill, filed herein, on the ground the Answer is insufficient as a defense and Plaintiff is entitled to the Declaratory Decree sought and injunction against the Defendant and its officers and agents as prayed in the Bill.

H. C. CRITTENDEN,
W. H. HAMILTON,
Solicitors for Plaintiff.

On the 23rd day of June, A. D. 1941, at the hour of 10:50 o'clock in the forenoon, the Order Granting Motion for Decree on Bill and Answer was filed for record and entered in Chancery Order Book 116, page 27, in the words and figures following:

No. 21910-37-207. 414149. In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida.

In Chancery. Filed for record. 1941 Jun 23 AM 10 50. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. D. H. Sloan, Jr., Clk. Ct. Ct. Polk Co., Florida. Bill for Declaratory Decree and Other Relief. Order Granting Motion for Decree on Bill and Answer. State of Florida, County of Polk. Filed for record this June 23, 1941. Recorded in Chancery Order Book 116, Page 27. Record Verified: D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C. Henry Sinclair, Attorney at Law, Winter Haven, Florida. Record Verified.

122 ORDER GRANTING MOTION FOR DECREE ON BILL AND ANSWER.

In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

This cause came on this day to be heard on the motion of the plaintiff for a decree on the Bill of Complaint and the Answer of the defendant thereto, and the argument of counsel for the respective parties, it being admitted by the defendant that this Court has jurisdiction of the parties and authority to enter a Declaratory Decree herein under Section 4953 and 4954 C. G. L. 1927; and the Court being of the opinion that the primary question here involved is the validity of the deferred interest coupons attached to each of the refunding bonds of the City

of Winter Haven issue of 1933, the Court will therefore discuss and dispose of this issue before considering others or answering the questions propounded in the Bill of Complaint seriatim.

The plaintiff contends that the deferred interest coupon is valid and enforceable as a mere continuance of the rate of interest borne by the original bonds refunded, except the amount required to retire the deferred coupon, may by the terms of the bonds and the 1933 refunding contract, be substantially reduced by early call of the bonds, viz., at fifty (50%) per cent of the face amount thereof if called before April 1, 1943, and if called on or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943, and April 1, 1953, at seventy-five (75%) per cent of the face amount of the deferred coupon; that such contingent reduction of interest rate on call is a definite advantage to the City and its taxpayers, and sufficient, coupled with the extension of the principal of the bond indebtedness for a period of years, to off set any cost incurred by reason of the refunding, including fiscal agent's fees, looking at the matter from a strictly dollars and cents angle. In this, it is only logical to assume some savings to the City and taxpayers would be made by early call of the bonds, and it is logical to assume that savings would exceed the approximate sum of Thirty-five Thousand ($35,000.00) Dollars paid by the City as refunding expense.

The City contends the deferred interest coupon attached to the several bonds is invalid and unenforceable, as having been issued by the City in violation of Section VI, Article IX of the Constitution of Florida, in this, under the 1933 refunding contract, the full bond indebtedness is refunded, including all accrued interest to the date of the new bonds, and the effect of the deferred interest

coupon is to retain the full indebtedness, plus the rate of interest borne by the original bonds, and the result is the adding to the bond indebtedness of the City the cost of refunding, without a favorable referendum of freeholder electors of the City as required by Section VI, Article IX of the Constitution; the City does not contend that the 1933 refunding bonds are invalid by reason of the invalidity of the deferred coupons, it contending only that the deferred coupon is void, and the City is legally entitled to call the 1933 bonds under the 1933 refunding contract, less and except the face amount or any portion thereof of such deferred coupons.

The Court is of the opinion that under the decisions of the Supreme Court of Florida in the case of Outman vs. Cone, 192 So. 611, and Taylor vs. Williams, 195 So. 175, that the deferred coupons are not authorized by law and must be eliminated as an unenforceable provision of the bonds otherwise the entire 1933 issue of refunding bonds of the City might be rendered invalid; but the provision in the 1933 refunding contract and the 1933 bonds with reference to such deferred coupons may be treated and will be treated as severable or separable from the balance of the contract and the several bonds, and thus elided therefrom, rendering the provisions remaining in the 1933 bonds fully enforceable.

The Court having now disposed of the principal issue involved in the opinion of the Court, the Court will take up and answer seriatim the questions propounded in the Bill of Complaint.

It is thereupon Ordered, Adjudged and Decreed that question 1, as follows:

"Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid or invalid?"

shall be answered by stating such deferred coupon is invalid.

Answering question 2, as follows:

"Under the refunding contract of 1933, will a tender by the City on call of principal, plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupons attached to the 1933 bonds, toll the running of interest on the refunding bonds, issue of 1933? And will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?"

The Court is of the opinion that both sections of the question should be and same are answered in the affirmative.

Answering question 3, as follows:

"May the City pay interest on City of Winter Haven refunding bonds, issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were made solely for the refunding bonds issue of 1933? And would such payment impair the contract right of this plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds, when exchanged, be a mere continuation of the debt evidenced by the 1933 bonds in a new form,

so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?"

The Court is of the opinion, the City may pay interest accruing on the new refunding issue of January 1, 1941, which will accrue July 1, 1941, from proceeds of tax collections from general levies for debt service for the fiscal year 1940-41 of the City and prior years since 1933, although levied exclusively for the 1933 bonds, the new bonds, issue of 1941, being a mere continuation of the existing indebtedness of the City in new form, but at a lower rate of interest; the answer therefore to the first section of this question is "yes".

The second section of this question is answered as follows: The Court is of the opinion that payment of interest on the 1941 bonds, as aforesaid, does not impair the contract right of plaintiff, nor other holders of the 1933 issue of bonds; and the 1941 refunding bonds, when exchanged, being a mere continuation of the debt evidenced by the 1933 bonds in a new form, will justify the City in paying interest accruing on the 1941 bonds from proceeds of levies made for the 1933 bonds.

Answering question 4, as follows:

"May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter, so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds, issue of January 1, 1941, or not,) a tax against taxable property in said City of Winter Haven, sufficient to produce the sum of $120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933?"

This question should be and same is answered in the negative, with the following qualification; should the City fail to provide funds to call the 1933 bonds with accrued interest, as provided in the 1940 refunding contract, except interest represented by the deferred coupon, and some of the holders of 1933, refuse to exchange their bonds for the new issue of January 1, 1941, the Court is of the opinion that the holders of the 1933 issue of bonds may require a levy of a tax annually under the provisions of the 1933 refunding contract in a sufficient amount to produce such prorate amount of the One Hundred Twenty Thousand ($120,000.00) Dollars annual levy, as the amount of the unrefunded 1933 bonds bear to the outstanding principal bond indebtedness of the City at the time such levy is sought.

Answering question 5, as follows:

"May this Court enjoin the payment of interest on the January 1, 1941, issue of refunding bonds of the City of Winter Haven, accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933?"

The Court answers this question in the negative.

Answering question 6, as follows:

"If said deferred interest coupon attached to the refunding bonds, issue of 1933, be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature although in said 1933 contract and bonds, or is such deferred coupon such a severable or separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom

without affecting other provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?"

The Court finds that the invalidity of the deferred coupon attached to the refunding bonds, issue of 1933, and the provision in the 1933 refunding contract for the issuance of the deferred coupon is severable from the bonds and balance of the contract, respectively, and does not invalidate the call provision in the 1933 bonds or the 1933 contract; the Court further finds, and answers this question, by stating the deferred coupon attached to the several bonds and that portion of the 1933 contract relating to such deferred coupon may be and is treated as elided and eliminated from the 1933 bonds and contract respectively, without affecting the validity or enforceability of any other provisions of such bond or the 1933 contract;

And now having answered the several questions propounded, it is Further Ordered, Adjudged and Decreed that the prayer of the plaintiff for injunction against the City, its officers and agents, incorporated in the Bill of Complaint, be and the same is hereby denied;

And the plaintiff by his solicitor having announced to the Court that he elected not to plead further in said cause, it is thereupon Ordered, Adjudged and Decreed that this cause be and the same is hereby dismissed, with costs herein in the sum of $7.50 taxed against the plaintiff.

Done, Ordered and Adjudged at Lakeland, Polk County, Florida, this 23 day of June, A. D., 1941.

H. C. PELLEWAY,
Judge.

State of Florida,
County of Polk,

Filed for record this June 23, 1941 at 10:50 a. m. Recorded in Chancery Order Book 116, Page 27 and Record Verified.

D. H. SLOAN, JR.,
Clerk Circuit Court.
L. STIDHAM, D. C.

On the 25th day of June, A. D. 1941, Notice of Appeal was filed and entered in Chancery Order Book 116, page 73, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910½-H-139. ×414252. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Notice of Appeal. Filed for record 1941 Jun 25 PM 2 57. D. H. Sloan, Jr., Clk. Ct. Ct. Polk Co. Florida. State of Florida, County of Polk. Filed for record this Jun 25, 1941. Recorded in Chancery Order Book 116, Page 73. Record Verified. D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C. H. C. Crittenden, Attorney at Law, 311-12 Bexmer Building, Winter Haven, Florida, for Plaintiff. Record Verified.

121

NOTICE OF APPEAL.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes the Plaintiff George Andrews by and through his undersigned Solicitors, and enters this his appeal to the Supreme Court of Florida, from that certain final order on motion of the Plaintiff for decree on Bill and Answer made and entered on the 23rd day of June A. D. 1941, by the Circuit Court of Polk County, Florida, in that certain cause pending in the Circuit Court, Tenth Judicial Circuit, in and for Polk County, Florida, in Chancery, wherein George Andrews was Plaintiff, and the City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, was Defendant, the said order and final decree being recorded A. D. 1941 in Chancery Order Book 116, Page 27 in the office of the Clerk of the Circuit Court of Polk County, Florida; and the Defendant as aforenamed and designated is hereby made a party to this appeal.

This appeal is entered on this the 25th day of June A. D. 1941 and the same is hereby made returnable in the Supreme Court of Florida on the 30th day of July A. D. 1941.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

H. C. CRITTENDEN.
W. H. HAMILTON.
Solicitors for Plaintiff.

I, the undersigned Solicitor for the Defendant, City of Winter Haven and City Attorney for the said City of Winter Haven, do hereby acknowledge receipt of a copy of the foregoing notice of appeal.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR,
Solicitor for Defendant.

State of Florida,
County of Polk.

Filed for Record this June 25, 1941 at 2:57 P. M. Recorded in Chancery Order Book 116, Page 73 and Record Verified.

D. H. SLOAN, JR.,
Clerk Circuit Court.
L. STIDHAM, D. C.

On the 25th day of June, A. D. 1941, Assignment of Errors was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910½-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Assignment of Errors. Filed in this office Jun 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law, 311-12 Beymer Building, Winter Haven, Florida, for Plaintiff.

135 ASSIGNMENT OF ERRORS.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff.

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Comes now George Andrews, Plaintiff in the foregoing cause, by his undersigned solicitor, and files these his assignment of errors upon which he relies for reversal of the foregoing cause in the Supreme Court of Florida, which assignments are as follows, to-wit:

1. The Court erred in the entry of its order of 1941, recorded in Chancery Order Book 116, Page 27, Public Records, Polk County, Florida, denying injunction sought by the Plaintiff against the City of Winter Haven, its officers and agents and dismissing the cause.

2. The Court erred in making and entering its decree aforementioned in holding the deferred coupon attached to each of the bonds issue of 1933 of the City of Winter Haven to be invalid and unenforceable.

3. The Court erred in making and entering its decree aforementioned in holding the City without power and authority to issue the deferred interest coupon aforementioned as in violation of Section 6, Article 9, of the Constitution of Florida.

4. The Court erred in the entry of said decree in holding that under the refunding contract of 1933 and

under the contract as evidenced by the 1933 bonds themselves that a tender by the City on call of principal of said 1933 bonds, plus accrued interest upon said bonds, less and except accrued interest represented by the deferred interest coupon attached to each of the 1933 bonds, will toll the running of interest on the refunding bonds issue of 1933.

5. The Court erred in the entry of said decree in holding that a holder of bonds of the issue of 1933 will be required to accept tender of principal, plus accrued interest of the refunding bonds issue of 1933, except accrued interest represented by deferred coupon, without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon attached to the several bonds.

6. The Court erred in the entry of said decree in holding that the City of Winter Haven may pay interest on City of Winter Haven refunding bonds issue of January 1, 1941 accruing July 1, 1941 from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City and prior years since 1933, although such levies were made solely for the refunding bonds issue of 1933.

7. The Court erred in the entry of said decree in holding that payment of interest accruing July 1, 1941 on City of Winter Haven refunding bonds issue of January 1, 1941, out of proceeds of tax collections from general levies for debt service made solely for refunding bonds issue of 1933 would not impair the contract right of the Plaintiff under the 1933 refunding contract to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of the 1933 bonds so long as any such bonds remain outstanding.

8. The Court erred in the entry of said decree in holding that the 1941 refunding bonds when exchanged would be a mere continuation of the debt evidenced by the 1933 bonds in a new form so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds.

9. The Court erred in the entry of said decree in holding that the City of Winter Haven may not be commanded and required by mandatory injunction to levy hereafter so long as any refunding bonds of said City issue of 1933 remain outstanding a tax against taxable property in said City of Winter Haven sufficient to produce the sum of $120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933; and this whether part of said bonds issue of 1933 be exchanged for new refunding bonds issue of 1941.

10. The Court erred in the entry of said decree in holding that should the City fail to provide funds to call the 1933 bonds with accrued interest as provided in the 1940 refunding contract except interest represented by the deferred coupon and some of the holders of 1933 bonds refused to exchange their bonds for the new issue of January 1, 1941 that such holders of the 1933 bonds may require only a levy of a tax annually under the provisions of the 1933 refunding contract in a sufficient amount to produce only such pro rata amount of the 120,000.00 annual levy provided in the 1933 contract, as the amount of the unrefunded 1933 bonds bear to the outstanding principal bond indebtedness of the City at the time such levy is sought.

11. The Court erred in the entry of said decree in holding that the Court will not enjoin the payment of interest on the January 1, 1941 issue of refunding bonds

of the City of Winter Haven accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933.

12. The Court erred in the entry of said decree in holding that the invalidation of the deferred coupon attached to the 1933 bonds will not invalidate the the call provision in the 1933 refunding contract and in the refunding bonds of 1933 so as to vitiate the call feature altogether in said 1933 contract and bonds.

13. The Court erred in the entry of said decree in holding that the provision in the 1933 contract with reference to the deferred coupon and the provision in the 1933 bonds themselves with reference to said deferred coupon are such a severable and separable portion of said contract and bonds so that same may be treated as elided and eliminated therefrom without affecting the call provision in such 1933 contract and bonds and so as not to vitiate said call provision.

Wherefore the premises considered Plaintiff prays that the Supreme Court reverse the order and final decree of the Circuit Court made and entered June 23rd, 1941, recorded in Chancery Order Book 116, Page 27, Public Records of Polk County, Florida, on motion of the Plaintiff for decree on Bill and Answer wherein the Court answered questions propounded by Plaintiff in the Bill of Complaint seeking a declaratory decree against the interest of the Plaintiff and in favor of the City of Winter Haven, and denied Plaintiff's prayer for injunctive relief against said Defendant City of Winter Haven; and remand said cause to the Circuit Court of Polk County with instructions to said Court to answer the questions propounded by the Plaintiff in favor of the Plaintiff

and against the Defendant and grant the injunctive relief prayed by the Plaintiff in said Bill of Complaint.

H. C. CRITTENDEN,
W. H. HAMILTON,
Solicitors for Plaintiff.

State of Florida,
County of Polk.

I, the undersigned solicitor of record for the Defendant, City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing assignment of errors.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR,
Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Statement of Questions Proposed for Adjudication on Appeal was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910 g-Hi-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Statement of Questions Proposed for Adjudication on Appeal. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law, 311-12 Beymer Building, Winter Haven, Florida, for Plaintiff.

141 STATEMENT OF QUESTIONS PROPOSED FOR ADJUDICATION ON APPEAL.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

1. Where refunding bonds issue of 1933 of the City of Winter Haven issued to refund at principal of the outstanding indebtedness of said City, plus then accrued interest, have attached thereto and carry provision therefor in the refunding contract of 1933 and in the 1933 bonds themselves, deferred interest coupons, recouping interest to the old rate if not retired before maturity, and the refunding contract of 1933 and the 1933 refunding bonds provide for the retirement of such deferred coupons in cash at 50% of the face amount thereof, if the 1933 bonds are called before 1943, and thereafter at a higher percentage, and the City of Winter Haven now proposes to call the 1933 bonds at par plus accrued interest less and except accrued interest represented by the deferred interest coupon, may the City compel holders of the 1933 bonds to accept payment of the 1933 bonds less and except interest represented by the deferred coupon, upon the ground the deferred coupon represents an increase of the indebtedness of the City in 1933, so as to violate Section 6, Article 9, of the State Constitution, the refunding fee of the 1933 fiscal agent and other expense of such refunding program having been paid by the City, amounting to approximately $35,000.00, and no favorable

referendum of the freehold electors being held before issuance of the 1933 bonds?

2. Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid?

3. (a) Under the refunding contract of 1933 will a tender by the City on call of principal plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupon attached to the 1933 bonds, toll the running of interest on the refunding bonds issue of 1933?

(b) Will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?

4. (a) May the City pay interest on City of Winter Haven refunding bonds issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were made solely for the refunding bonds issue of 1933?

(b) Would such payment impair the contract right of the Plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds when exchanged be a mere continuation of the debt evidenced by the 1933 bonds in a new form so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?

5. May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds issue of January 1, 1941) a tax against taxable property in said City of Winter Haven sufficient to produce the sum of $120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933.

6. May the Circuit Court enjoin the payment of interest on the January 1, 1941 issue of refunding bonds of the City of Winter Haven accruing July 1, 1941 from funds collected from the levies made solely for the refunding bonds of said City issue of 1933?

7. If said deferred interest coupon attached to the refunding bonds issue of 1933 be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature altogether in said 1933 contract and bonds, or is such deferred coupon such a severable and separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom without affecting other provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?

H. C. CRITTENDEN,
W. H. HAMILTON,
Solicitors for Plaintiff.

State of Florida.
County of Polk.

I, the undersigned Solicitor of Record for the Defendant, City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing statement of questions proposed for adjudication.

Dated Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR.
Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Stpiulation was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910½-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Stipulation. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, for Plaintiff.

146 STIPULATION

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff.

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

It is hereby stipulated by and between H. C. Crittenden and W. H. Hamilton, Solicitors for the Plaintiff in the

foregoing cause and Henry Sinclair, Solicitor for Defendant in the foregoing cause, that the Bill of Complaint with exhibits, the answer of the Defendant herein filed, the motion of the Plaintiff for a decree on the Bill and Answer, and the Order of Final Decree of the Circuit Court granting the Motion of the Plaintiff for Decree on Bill and Answer, together with the appeal papers herein filed, shall constitute the necessary pleadings and record of proceedings in the foregoing cause in the Circuit Court of Polk County essential for the Supreme Court of Florida to adjudicate the questions involved herein.

The Defendant hereby waives the 10 day period within which Appellee may file amendments to the questions proposed for adjudication.

Dated at Winter Haven, Florida, this 25th day of June 1941.

H. C. CRITTENDEN,
W. H. HAMILTON,
Solicitors for Plaintiff.
HENRY SINCLAIR,
Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Directions to Clerk or Statement of Pleadings and Proceedings to be Incorporated in Record was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Directions to Clerk or Statement of Pleadings and Proceedings to Be Incorporated in Record. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law.

311-12 Beymer Building, Winter Haven, Florida, for Plaintiff.

149 DIRECTIONS TO CLERK OR STATEMENT OF PLEADINGS AND PROCEEDINGS TO BE INCORPORATED IN RECORD.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff.

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

The Clerk of the above styled Court will please begin the preparation of a transcript of the proceedings in the above styled cause at the earliest time permitted by the rules of the Court, and complete the same as expeditiously as possible, and in time to be filed with the Supreme Court of Florida before the return day named in the notice of appeal herein filed, and will copy and certify the following:

1. Copy Bill of Complaint, with all exhibits attached, filed June 23rd, 1941.

2. Copy the Answer of the City of Winter Haven filed June 23rd, 1941.

3. Copy motion of the Plaintiff for a decree on the Bill of Complaint and the Answer of the Defendant to said Bill filed June 23rd, 1941.

4. Copy Order of the Court granting motion for decree on Bill and Answer and dismissing said cause filed and recorded June 23rd. 1941. and copy record of same.

5. Copy the notice of appeal filed and recorded June 25th. 1941. and the record of said notice of appeal.

6. Copy statement of Questions Proposed for Adjudication filed June 25th. 1941.

7. Copy Assignment of Errors filed June 25th. 1941.

7-a. Copy Stipulation of Counsel dated June 25. 1941

8. Copy these Directions or statement.

9. Add certificate of the Clerk that all costs have been paid.

10. Add certificate of the Clerk authenticating transcript.

H. C. CRITTENDEN.
W. H. HAMILTON.
Solicitors for Plaintiff.

State of Florida,
County of Polk.

I, the undersigned Solicitor for the Defendant, City of Winter Haven, and City Attorney for the said City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing Directions to the Clerk or statement of pleadings and proceedings to be incorporated in the record.

Dated this 25th day of June A. D. 1941.

HENRY SINCLAIR.
Solicitor for Defendant.

On the 6th day of October, A. D. 1941, the Mandate of the Supreme Court of the State of Florida was filed, in the words and figures following:

Book 117, Page 400

152 MANDATE FROM SUPREME COURT.

The State of Florida

To the Honorable, the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:

Whereas, Lately in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for the County of Polk in a cause wherein George Andrews, was Plaintiff, and City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, was defendant, the Order of said Circuit Court was rendered June 23, 1941, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1941, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 13th day of September, A. D. 1941, it was considered by said Supreme Court that the said Order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant its costs by it in this behalf expended, which

costs are taxed at the sum of ..... Dollars; therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, the Honorable Armstead Brown, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 3rd day of October, A. D. 1941.

GUYTE P. McCORD,
Clerk, Supreme Court of Florida.
By ELLA O'NIELL WILKINS,
D. C.

(Supreme Court Seal)

State of Florida.
County of Polk.

Filed for record this Oct. 6, 1941 at 9:51 A. M. Recorded in Chancery Order Book 117, Page 400, and Record Verified.

D. H. SLOAN, JR.,
Clerk, Circuit Court.
L. STIDHAM,
D. C.

21910½-H-139. 418740. George Andrews vs. City of Winter Haven. Mandate. State of Florida, County of Polk. Filed for record this Oct. .. 1941. Recorded in Chancery Order Book 117, Page 400. Record Verified. D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C.

State of Florida.
County of Polk.

I. D. H. Sloan, Jr., Clerk of the Circuit Court in and for Polk County, Florida, do hereby certify that I am the officer having the legal custody of the papers hereinafter referred to and that the above and foregoing is a true, correct and complete copy and transcript of the record on file in my office in that certain cause lately pending in the said Circuit Court, wherein George Andrews was plaintiff and City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, was defendant, including all indorsements upon the respective papers filed in said cause.

In Witness Whereof, I have hereunto set my hand and seal of office, at Bartow, Florida, this 20th day of October, A. D. 1941.

S. D. H. SLOAN, JR.
Clerk of the Circuit Court in and for Polk County, Florida.

(Circuit Court Seal)

State of Florida.
County of Volusia.

On this day personally appeared before me Bettye Thomas, to me well known, who, being by me first duly sworn, deposes and says that she is employed in the law office of Hull, Landis & Whitehair, attorneys for the plaintiffs in the above styled cause, and that on the 14th day of March, A. D. 1942, at 10:15 o'clock, a. m., she served a true and correct copy of the above and foregoing Amendment to Complaint upon Mr. Henry Sinclair, the attorney of record for the defendants in said cause, by mailing a true copy thereof to him at his last known

address, said copy being enclosed in an envelope, bearing the requisite amount of uncanceled United States postage stamps, by depositing said envelope, containing such copy, properly sealed, stamped and addressed as given below, in the postoffice at DeLand, Florida, said envelope being addressed as follows:

Mr. Henry Sinclair,
Winter Haven, Florida.

BETTYE THOMAS.

Sworn to and subscribed before me this 14th day of March, A. D. 1942.

ELIZABETH GRAVES,
(Notarial Seal) Notary Public, State of Florida.

My commission expires: May 4, 1945.

On the 14th day of April 1942, Default was entered in Civil Order Book 3 at page 590 in the following words and figures to-wit:

(Title Omitted.)

It appearing from the papers filed in this cause that an order was entered therein under date of the 7th day of March, A. D. 1942, wherein it was provided that the plaintiffs have ten days within which to amend the complaint previously filed, and that said complaint was amended on March 16th, 1942, by the filing of an amendment to said complaint, and it appearing from the affidavit attached to the Amendment to Complaint, filed in this cause on March 16th, 1942, that a copy of said Amendment to Complaint was served on March 14th, 1942, and it further appearing from the files in said cause

that the defendants have failed to plead to the complaint, and so amended, or to otherwise defend this action, as provided by the Federal Rules of Civil Procedure.

The default of the defendants, The City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commissioner of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven, for failure so to do, is hereby entered.

Done and Ordered at Tampa, Florida, this 14th day of April, A. D. 1942.

(Seal)

EDWIN R. WILLIAMS,
Clerk of the United States District Court for the Southern District of Florida.
By ANNA M. MITCHELL,
Deputy Clerk.

On the 29th day of April 1942, Stipulation was filed in the following words and figures to-wit:

(Title Omitted.)

It is hereby stipulated and agreed by and between the undersigned counsel for the respective parties in the above entitled cause that the default heretofore entered

by the Clerk in said Court and cause, be vacated and set aside, and, further, that the Motion to Dismiss filed by the defendants to the original Complaint of the plaintiffs shall stand as the defendants' Motion against the plaintiffs' Complaint as amended.

HULL, LANDIS & WHITEHAIR,
D. C. HULL,
Solicitors for the plaintiffs.
HENRY SINCLAIR,
Solicitor for the defendants.

On the 6th day of June 1942, the Court entered its Order in Civil Order Book 3 at page 787, in the following words and figures to-wit:

(Title Omitted.)

This matter coming on on motion to dismiss Plaintiff's complaint as amended, and the matter having been heard and considered by the Court, it is hereby

Ordered and Adjudged that the said motion to dismiss be and the same hereby is granted, and that the Defendants go hence without day. The costs of the case are assessed against the Plaintiff.

Done and Ordered in Chambers this 6th day of June, A. D. 1942.

WILLIAM J. BARKER,
District Judge.

On the 7th day of July 1942, the Plaintiffs filed their Notice of Appeal in the following words and figures to-wit:

(Title Omitted.)

Notice is hereby given that the plaintiffs, W. J. Meredith, James G. Martin, and A. R. Ohmart, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the order entered in this action on the 6th day of June, A. D. 1942.

HULL, LANDIS & WHITEHAIR,
D. C. HULL,
Attorneys for Appellants, W. J. Meredith, James G. Martin and A. R. Ohmart.

Address: DeLand, Florida.

On the 7th day of July 1942, an Appeal Bond was filed in the following words and figures to-wit:

(Title Omitted.)

Know All Men By These Presents: That we, W. J. Meredith, James G. Martin and A. R. Ohmart, as Principals, and St. Paul Mercury Indemnity Company of Saint Paul, a corporation, a surety company duly authorized to transact business in the State of Florida, as Surety, are hereby held and firmly bound and obligated unto the City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-

Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commission of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven, in the sum of $250.00, for the payment whereof well and truly to be made they do hereby bind themselves and their respective executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 24th day of June, A. D. 1942.

The condition of this obligation is that,

Whereas W. J. Meredith, James G. Martin, and A. R. Ohmart, the plaintiffs in this cause, are taking an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the order dismissing this cause, rendered and entered in this cause, on the 6th day of June, A. D. 1942, in the District Court of the United States for the Southern District of Florida, Tampa Division, in which cause the said W. J. Meredith, James G. Martin and A. R. Ohmart are plaintiffs, and the City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commission of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven,

and as City Treasurer and Collector of the said City of Winter Haven, are defendants.

Now, Therefore, if the said W. J. Meredith, James G. Martin and A. R. Ohmart shall prosecute their appeal to effect and answer all costs if they shall fail to make their plea good, and if they shall pay all costs if said appeal is dismissed or said order affirmed, or such costs as said United States Circuit Court of Appeals for the Fifth Circuit may award if said order is modified, then this obligation shall be void, otherwise the same is to remain in full force and effect.

W. J. MEREDITH. (Seal)
(W. J. Meredith)
JAMES G. MARTIN. (Seal)
(James G. Martin)
A. R. OHMART. (Seal)
(A. R. Ohmart)
As Principals,
ST. PAUL MERCURY INDEMNITY COMPANY OF SAINT PAUL.
(Corporate Seal)
As Surety,
By BURTON C. THORNAL,
(Corporate Seal) Its Attorney in Fact.

On the 11th day of July 1942, the Plaintiffs file their Designation of Contents of Record on Appeal in the following words and figures to-wit:

(Title Omitted.)

Appellants hereby designate for inclusion in the record on Appeal, the complete record and all the proceedings in this cause, to-wit:

1. The complaint and the exhibits thereto attached, filed September 9, 1941.

2. The summons and the return of service indorsed thereon.

3. Motion of defendants to dismiss the complaint, together with the notice and affidavit thereto attached, filed September 27, 1941.

4. Order granting Motion to Dismiss, such Order being dated March 7, 1942.

5. Amendment to complaint, and the exhibits thereto attached, as well as the affidavit of service thereto attached, filed March 16, 1942.

6. Default, entered April 14, 1942.

7. Stipulation of counsel, filed April 29, 1942.

8. Order granting motion to dismiss complaint, as amended, and that defendants go hence without day, such order being dated June 6, 1942.

9. Notice of appeal, filed July 7, 1942.

10. Appeal bond filed July 7, 1942.

11. This designation of contents of record on appeal, with affidavit of service thereof thereto attached.

HULL, LANDIS & WHITEHAIR.
D. C. HULL.
Attorneys for Appellants. W. J. Meredith, James G. Martin and A. R. Ohmart.

State of Florida,
County of Volusia.

On this day personally appeared before me, Elise Waters, to me well known, who, being by me first duly sworn, deposes, and says that she is employed in the law office of Hull, Landis & Whitehair, attorneys for the plaintiffs in the above styled cause, and that on the 10th day of July, A. D. 1942, at 3:45 o'clock P. M., she served a true and correct copy of the above and foregoing designation of contents of record on appeal upon Mr. Henry Sinclair, the attorney of record for the defendants in said cause, by mailing a true copy thereof to him at his last known address, said copy being enclosed in an envelope, bearing the requisite amount of uncanceled United States postage stamps, by depositing said envelope, containing such copy, properly sealed, stamped and addressed as given below, in the postoffice at DeLand, Florida, said envelope being addressed as follows:

Mr. Henry Sinclair,
Winter Haven, Florida.

ELISE WATERS

Sworn to and subscribed before me this 10th day of July, A. D. 1942.

ELIZABETH GRAVES,
Notary Public, State of Florida.

(Notarial Seal Affixed)

My Commission expires: May 4, 1945

CERTIFICATE OF CLERK.

United States of America,
Southern District of Florida,
Tampa Division, ss.

I, EDWIN R. WILLIAMS, Clerk of the District Court of the United States for the Southern District of Florida, do hereby certify that the foregoing pages numbered One to 161, both inclusive, contain and constitute a complete, true and correct copy and transcript of the record of all the proceedings and matters as the same appear on file and of record in my office that have been directed to be included and contained in the record on appeal by appellants' written designation, in the case of W. J. Meredith, James G. Martin, and A. R. Ohmart, Plaintiffs, versus The City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, et al., Defendants, Case Number 420 Civil Tampa. I further certify that the foregoing transcript of record contains all exhibits filed in said cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Tampa, Florida, on this the 24th day of July A. D. 1942.

EDWIN R. WILLIAMS,
As Clerk of the United States District Court for the Southern District of Florida.

(Seal)

By NETTIE TIDWELL,
Deputy Clerk.

[fol. 189] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of December 10, 1942

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART

versus

CITY OF WINTER HAVEN, et al.

On this day this cause was called, and, after argument by D. C. Hull, Esq., for appellants, and Giles J. Patterson, Esq., for appellees, was submitted to the Court.

[fol. 190] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed February 3, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART, Appellants,

versus

CITY OF WINTER HAVEN, et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(February 3, 1943)

Before Sibley, Hutcheson, and McCord, Circuit Judges

HUTCHESON, Circuit Judge:

Appellants are holders of City of Winter Haven general refunding bonds, issue of 1933. Alleging that the defendants were proposing to call the bonds for payment but re-

fusing to pay the deferred or accumulated interest as provided for therein, they brought this suit for a declaratory decree adjudicating and determining that this may not be [fol. 191] done, and an injunction restraining defendants from attempting to do so, and, in the alternative, if this relief may not be had, for a declaration that plaintiffs are entitled to be subrogated to, and assume, the position, as to principal and interest, of the holders of a like amount of the original indebtedness refunded by the bonds they hold. The defendants' motion to dismiss for failure of the complaint as amended to state a claim for relief was granted on the

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[1] This, briefly stated, is the case the complaint as amended makes:

In July, 1933, the City of Winter Haven had an outstanding bonded indebtedness of approximately $2,148,054.78, principal and interest.

The accumulated defaulted interest, as of April 1, 1933, was approximately $195,000.00, and the defaulted principal amounted to around $375,000.00, and the City had been in default in payment of its bonded indebtedness since 1931.

By a resolution adopted July 24, 1933, the City authorized the issuance of its General Refunding Bonds, Issue of 1933, dated April 1, 1933, for the purpose of refunding its outstanding bonded indebtedness.

The refunding issue was divided into Series "A" bonds, to be exchanged for the outstanding 6% obligations, and Series "B" bonds, to be exchanged for the outstanding 5½% obligations.

The originally outstanding bonds consisted chiefly of bonds which matured serially from 1930 to 1962.

The General Refunding Bonds, Issue of 1933, postponed all maturities, so as to make the bonds mature serially from April 1, 1948, and annually thereafter to April 1, 1963.

The authorizing resolution described in detail the outstanding bonds to be refunded and also specified the numbers, amounts and maturity dates of the 1933 refunding bonds to be issued and provided a definite scheme of exchange of new bonds for old bonds, so that it will always be possible for the holder of a General Refunding Bond of the Issue of 1933, to identify the particular original indebtedness that was refunded by the particular 1933 bond which he holds.

authority of *Outman vs. Cone*, 192 Southern 611; *Taylor* [fol. 192] *vs. Williams*, 195 So. 175; *State vs. Special Tax School District of Pinellas County*, 197 So. 127, and *Andrews v. Winter Haven*, 3 So. (2) 805, and plaintiffs have

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The General Refunding Bonds, Issue of 1933, were validated in statutory validation proceedings.

They were not sold on the open market, but were issued in exchange for a corresponding amount of original outstanding obligations of the city, in accordance with the authorizing resolution, which outstanding securities were cancelled and surrendered. The 1933 refunding bonds bore semi-annually maturing interest at the rate of 3½% from April 1, 1933, to April 1, 1935, 4% from April 1, 1935, to April 1, 1936, 4½% from April 1, 1936, to April 1, 1937, 5% from April 1, 1937, to April 1, 1943, and thereafter at the rate of 6 percent in the case of Series "A" bonds and 5½% in the case of Series "B" bonds. The differential between the interest rate borne by the originally outstanding debt and the semi-annually maturing interest borne by the new refunding bonds for the ten-year period from April 1, 1933, to April 1, 1943, was referred to in the bonds as deferred interest. With the difference only of 5½% in Series "B", the bonds contained the following provision: "if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of 6 percent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforcible, collectible and paid upon presentation and surrender of said bonds."

The originally outstanding bonds were non-callable bonds, each being payable on a definite maturity date, and were not subject to call for redemption prior to maturity.

The General Refunding Bonds, Issue of 1933, were callable bonds, the City reserving the right to call and redeem such bonds, "on any interest payment date, by paying a portion of the deferred interest, according to the following schedule:

On or prior to April 1, 1943, at par, and accrued interest at the rate then prevailing, plus one-half of the deferred or accumulated interest for the ten-year period.

On or prior to two years before the maturity of the respective bonds, and during the period of time from April

appealed. They make two contentions here. The first is that these decisions are contrary to the rule of law laid down in *Sullivan vs. Tampa*, 134 So. 211, and represent a change in decision since plaintiffs' bonds were issued, that the

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1, 1943, to and including April 1, 1953, at par, and accrued interest at the rate then prevailing, plus three fourths of the deferred or accumulated interest for ten years.

From April 1, 1953, to and including April 1, 1963, the bonds could be called at par, and accrued interest at the prevailing rate, plus the full deferred or accumulated interest for ten years."

On December 22, 1939, the Supreme Court of Florida decided the case of Outman v. Cone, 192 So. 611, holding that a provision of payment of deferred interest at the original rate less previous payments where the refunding bonds had not been authorized by the freeholders was illegal and void.

Subsequent to the decision in Outman v. Cone, the City of Winter Haven authorized the issuance of new refunding bonds to refund its General Refunding Bonds, Issue of 1933, dated April 1, 1933, but repudiated all the provisions relative to deferred interest.

In the months of August and September, 1941, the City of Winter Haven published a notice purporting to call for redemption its General Refunding Bonds, issue of 1933, including bonds owned and held by the plaintiffs in this suit, without providing for the payment of any portion of the deferred interest.

On September 9, 1941, the appellants filed their complaint in the court below, showing that they were the holders of General Refunding Bonds, Issue of 1933, both Series "A" and Series "B" of the total amount of $297,900.00.

On September 13, 1941, the Supreme Court of Florida, four days after the filing of the complaint in this suit, decided the case of George Andrews v. City of Winter Haven, reported in 148 Fla. 144, 3 So. (2) 805, holding the deferred interest provisions of the Winter Haven General Refunding Bonds, Issue of 1933, to be invalid and unenforcible.

As to this suit, plaintiff alleged that, the suit brought by persons having no interest really adverse to each other but for the purpose of obtaining a state court ruling to be used against plaintiffs in this suit was a collusive one, and the judgment and decision in it was not valid and binding as a precedent.

[fol. 193] district court, therefore, erred in determining the validity of the called provisions in plaintiffs' bond contract, in not applying the rule of law laid down in the *Sullivan* case rather than the contrary rule laid down in the later cases. The second point is that if the district judge was right in holding the deferred interest provisions of plaintiffs' bond contract to be illegal and unenforcible, he erred in holding that the plaintiffs were not entitled under Section 20[2] of the bond resolution to assume the position of holders of a like amount of the original indebtedness refunded thereby and as such to enforce their claim for payment. On the first point, appellants urge upon us that it is the law both in the Federal Court[3] and in Florida[4] that where the highest court of a state has placed a given construction on the state constitution, and municipal bonds are thereafter issued in accordance with and accepted in reliance upon such construction, the contract will be governed by the law as announced at the time of its making rather than by the law announced in later decisions of the Supreme Court of the State. On its second point, appellants urge that if the call provisions of the bond contract are invalid and unenforcible, then plaintiffs are entitled, both under the express provisions of Section 20 of the bond resolution and under general principles of equity to be subrogated both as to principal and unpaid interest to the position of the holders of the

[2] Section 20 of the resolution authorizing the issuance of these refunding bonds provided "if any of the bonds hereby authorized be adjudged illegal or unenforcible in whole or in part, the holders thereof shall be entitled to assume position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment.

[3] Gelpcke v. City of Dubuque, 1 Wallace, 175; Ohio Life & Trust Co. v. DeBolt, 16 Howard, 432; Board of Public Instruction of Polk County v. Gillespe, 81 Fed. (2) 586; Board of Public Instruction vs. Lexington Co., 90 Fed. (2) 83; Board of Public Instruction of Broward County v. Osburn, 101 Fed. (2) 919, and Meredith vs. Board of Public Instruction of Hernando County, 112 Fed. (2) 914; same case 119 Fed. (2) 712.

[4] Columbia County Commissioners v. King, 13 Fla. 451; Humphreys v. State, 145 So. 858.

original bonds for which the refunding bonds were exchanged. Appellees, on their part, insist: that there is [fol. 194] no conflict between the *Sullivan* case and the later Florida cases; that the *Sullivan* case did not deal with a contract of this kind; that the later cases relied on by the district judge, as well as the still later case of *State vs. City of New Smyrna Beach*, 4 So. (2) 660, all distinguished the *Sullivan* case on its facts and expressly approved it; that the precise question here at issue, having been ruled by the Supreme Court of Florida in defendants' favor, the federal courts are bound to follow that ruling and may not, upon a finding of an apparent inconsistency between the earlier and later cases in the application to the facts of the controlling principle, enable a litigant in a federal court to obtain a result which he could not obtain in a state court. Appellees do not meet the second point head on with a denial of its correctness and an insistence that if the provisions for payment of the deferred or accumulated interest are held invalid, plaintiff would still not be entitled to subrogation to the original bonds. They do indeed insist that the second contention is unreasonable because if sustained it would give plaintiff considerably more accumulated or deferred interest than the refunding bonds themselves provide for and they do counter appellants' reliance upon the invoked provision of the second half of Section 20 by quoting the first half of it.[5] But this is only *arguendo*. Their real position with reference to it is that it is not alleged that the city has denied or repudiated its liability upon the deferred interest coupons when they mature, and since they do not become payable until the maturity of the bonds, there can be no actual present controversy with reference to their validity, and, therefore, no right to a declaratory judgment with respect to it, and to plaintiffs' right to subrogation to the original bonds should these coupons be declared invalid. Appellants agree that the immediately present controversy be- [fol. 195] tween it and the city, which caused this suit to be filed, is in form not over what the city will do with respect

[5] "If any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforcible by any court of final jurisdiction, it shall not affect or invalidate any remainder thereof. * * *."

to the deferred or accumulated interest coupons when the bonds mature but over what it will do with them when the bonds are called. But they point out that in substance the controversy concerns itself with the validity and enforcibility according to their terms, of provisions made in the bonds with respect to the deferred interest coupons, and of the provision of Section 20 for relief by subrogation, if the refunding bonds are held invalid in whole or in part. Arguing that if the city may call the bonds for payment without paying the coupons in accordance with the terms for their payment on call, it certainly will not, the bonds called and paid, be held to pay the coupons on the maturity date of the bonds, for they provide on their face for payment to the bearers on maturity of the bonds, "being the then enforcible, collectible and deferred interest * * * unless said bonds shall have been heretofore called for redemption" (underscoring supplied), they insist that their complaint presents an actual controversy with the city now ripe for determination and declaration, as to the validity of the deferred interest provisions of the bond, and as to the right of plaintiffs to subrogation if the coupons are held invalid. We agree with appellants that their complaint presented an actual controversy and therefore justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment as to the controlling law of Florida with respect to the coupons, and that if plaintiffs are right in their view, they are entitled to a declaration in their favor and an injunction in support of the declaration. We think it plain, however, that this determination should be sought in the state rather than in the federal courts. No federal question, constitutional or otherwise, is presented. The jurisdiction is invoked purely on grounds of diversity. Every question presented for decision, including: whether the *Sullivan* case, *supra*, authorized the deferred interest coupons and the pro-
[fol. 196] visions regarding them; whether if it does, the later decisions holding invalid the provisions for paying part of them on call, operate retrospectively [6] to strike them

[6] Snyder, Retrospective Operation of Overruling Decisions, Ill. Law Review, Vol. 35, page 121; Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 60 Sup. Ct., 215; Cf. Chicot County Drainage Dist. v. Baxter State Bank, 60 Sup. Ct. 317.

down, or upon the "principle of reliance" do not do so; and whether if they do, plaintiffs are entitled to the subrogation they pray for; is a question of state cognizance, to be determined under controlling state law. This being so, unless the jurisprudence of Florida, as it concerns these questions, has a settled cast both as to what has been decided and as to what is the state of permanence of the decided law, the federal court should hesitate to, indeed it should not, exercise the jurisdiction it undoubtedly has to proceed to determine them, but should decline it, leaving their decision to the state tribunals. Our examination of the state of the law in Florida on the matters in issue shows that it is not clear, settled and stable, but quite the contrary. In the *Sullivan* case, there was no question of deferred or accumulated interest coupons, none, therefore, of the proportion of them which could be paid in the event of call and redemption of the bonds before maturity, nor in the later cases which appellants claim are in conflict with it, was there any question as here of whether under Florida decisions, *Columbia County Commissioners vs. King, supra; State ex rel. Naveen vs. Greer*, 102 So. 739; *Humphreys vs. State, ex rel. Palm Beach Co.*, 145 So. 858; *Alta Cliff Co. v. Spurway*, 152 So. 731; *Lee v. Bond-Howell Lumber Co.*, 166 So. 733, the coupons should be held valid under the *Sullivan* case, notwithstanding the later rulings. The *Andrews* case, *supra*, did involve this same issue of bonds and it did hold invalid the bond provision for payment on call of part of the deferred interest coupons, but the question of their validity under "the principle of reliance" upon the doctrine of the *Sullivan* case was not presented to or [fol. 197] decided by the court, as it was not in any of the other cases appellees rely on. In addition, a careful reading of the Florida cases dealing with the validity of, contracts for refunding, and bonds refunded, without a vote of the people leaves us in considerable doubt as to what on these facts the law of Florida now is or will be declared to be. Cf. *State vs. City of Fort Meyers*, 198 So. 814. Under the operation of *Erie v. Tompkins*, 304 U. S. 64, the doctrine of judicial precedent binds the federal courts as to state supreme court decisions much more rigidly than it

binds those courts as to their own decisions[7] for there is no provision for taking a case from the federal courts to the state supreme court to obtain the overruling of a case badly decided there, as there is for its taking from inferior state courts. It, therefore, should be, it has been the rule of the federal courts where questions of state

[7] "Erie v. Tompkins has now settled this. We have two hierarchies of courts, the federal system and the state system. In the federal system, the supreme court is supreme in all matters of federal law, and we have machinery by which that hierarchy can keep its decisions straight under the rule of precedent because machinery is provided for taking cases from the highest state to the highest federal court. In the state system, the supreme courts of the state are supreme, but because there is no provision for review by them of federal court decisions, when you are in the federal courts, and those courts decide that there is a state court precedent in your way, there is nothing you can do about it to get a state court ruling on the point. All you can do is go up to the top of the federal hierarchy, the Supreme Court of the United States. If that court incorrectly applies the state precedent or correctly applies a state precedent, which though it is a state precedent is yet bad law, though you know that when reconsidered in the supreme court of the state it will be overruled, there is nothing you can do about it for you cannot get a writ to the state supreme court to construe or overrule its own precedent. I think you should be able to. * * * If a case must be decided according to the law of the state, it ought to be decided according to what that law is, not merely what it seems to the federal courts to be. Especially in this day of general re-examination and overruling of precedents, I think litigants in the federal courts ought to have the right, in any case where there is a real, a substantial controversy over the existence or binding effect of a state precedent, to obtain in some way, the last considered judgment of the supreme court of the state, as to what really is the state law on the point." from "The Erie-Tompkins Case and the Doctrine of Precedent, Advance or Retreat", Joseph C. Hutcheson, in Vol. 14, University of Cincinnati Law Review, "Status of the Rule of Judicial Precedent", p. 275 & 6.

law involving provisions of statutes or of constitutions especially when dealing with matters of general public [fol. 198] concern in a particular state, to decline to determine the state law and to remit the litigant to the state courts for that determination, *U. S. ex rel. Horigan vs. Hayward*, 98 Fed. (2) 433; *Moran v. City of Stewart*, 111 Fed. (2) 773; *Cavanaugh v. Looney*, 248 U. S. 453; *DeGiovanni v. Camden Ins. Ass'n*, 296 U. S. 64; *Gilcrist vs. Interborough*, 279 U. S. 159. We think it would be especially unwise here for the federal court to undertake in a declaratory judgment to determine the questions here presented for not only would it be undertaking to settle questions of state constitutional and statutory law affecting generally the fiscal affairs of municipalities and political subdivisions of the state which are by no means settled in the state courts, but it would be undertaking to declare the public policy of the state in respect of obligations of its municipalities in the light of an insistence that if those obligations are not valid, plaintiffs ought in equity to be subrogated to the position of earlier bond holders and the city be thereby more heavily burdened than it is burdened by the contract which plaintiffs seek to enforce. The suit seeks purely equitable relief, an injunction and subrogation. Especially in equity cases is it true that the federal courts, though possessing jurisdiction, will refrain from exercising it to determine state law, leaving the plaintiffs to the state courts. This the district judge should have done. *Railroad Comm. v. Pullman Co.*, 312 U. S. 496. The judgment is, therefore, reversed and the cause is dismissed without prejudice to plaintiffs' right to proceed in the state court as it may be advised to obtain determination of the questions here presented. Reversed and Dismissed without prejudice.

SIBLEY, Circuit Judge, Dissenting:

There being a presently acute justiciable controversy, I think we are bound to declare the rights of the parties, [fol. 199] though the grant of injunction is discretionary. The Constitution extends the judicial power of the United States to controversies between citizens of different States arising under the laws of a State, just as fully as to controversies arising under the Constitution and laws of the United States. There is the same power and the same duty

to decide both classes of cases. This case involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before due. Such questions have been decided by federal courts from the beginning.

Under presently prevailing rules of decision we must decide as the State Supreme Court has decided. On bonds of this same City and of this same issue that court has held that the provision for calling the bonds for payment before due is valid, but that part of the call provision which promises in that event to pay part of the deferred interest is invalid, but separable; so that the bond may be called but no deferred interest need be paid. *Andrews vs. City of Winterhaven*, 148 Fla. 144, 3 So. (2) 805. In that litigation in the trial court questions 2 and 6 proposed for declaratory decree related to this exact matter and were answered as above. The Supreme Court expressly affirmed the decree "in all respects". The decision was cited and relied on in *State vs. City of New Smyrna Beach*, 148 Fla. 482, 4 So. (2) 660. We are compelled to accept it as the law of Florida, though I do not see how the part payment of deferred interest which is the consideration for the City's privilege of calling the bonds can be denied effect when that privilege is itself upheld.

Justice can be done, however, in this case, for the resolution which authorized these refunding bonds, and declared itself to be a part of the refunding contract, provides: "If any of the bonds hereby authorized be adjudged illegal [fol. 200] or unenforceable in whole or *in part*, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such to enforce their claim for payment." Here a part of the new bond, that part which promises to pay one-half the deferred interest on call of the bond for payment at this time, is adjudged unenforceable. A just application of the agreement quoted is to remit the disappointed bondholder to his interest rights under the old bonds. Literally applied, it might entitle him to the full high rate up to the date of call, instead of only half of that which was deferred. In case of such a partial failure in effectiveness of the provisions of the new bonds, indemnity only ought to be afforded; that is to say, so much interest promised in the old bond ought to be paid as would make

good the loss caused by the partial unenforceability of the new bond. This question is not foreclosed by the decision in the *Andrews* case because the refunding resolution was not in that record and not considered by the court.

[fol. 201] JUDGMENT

Extract from the Minutes of February 3, 1943

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART

versus

CITY OF WINTER HAVEN, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and the cause is dismissed without prejudice to plaintiffs' right to proceed in the state court as it may be advised to obtain determination of the questions here presented;

It is further ordered, adjudged and decreed that the appellees, City of Winter Haven, and others, be condemned, in solido, to pay the costs of this cause in this Court.

"Sibley, Circuit Judge, dissents."

[fols. 202-206] PETITION FOR REHEARING—Filed February 22, 1943

In the United States Circuit Court of Appeals

FIFTH CIRCUIT

No. 10,402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Appellants,

versus

THE CITY OF WINTER HAVEN, a municipal corporation, et al.,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

PETITION FOR REHEARING

The Appellants in the above entitled cause respectfully represent that they have been aggrieved by the judgment of this Court, rendered in the above entitled cause, in the respects herein pointed out, and they respectfully petition this Court for a rehearing of said cause, upon the grounds hereinafter set forth.

I

The Court has apparently overlooked the fact that this is essentially a case involving the construction of a Federal statute, to-wit: Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725.

II

The Court has apparently overlooked the fact that this is a case, involving the jurisdictional amount, between citizens of different states, in which the jurisdiction of the Federal Courts is invoked, in order to obtain a decision upon a question of federal law, or in other words to construe and apply a Federal statute, to-wit, Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725.

III

The Court has apparently overlooked the fact that, in the case of Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, and in the later decisions following the doctrine announced there, the Supreme Court of the United States was construing a Federal statute, Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725, which provides:

> "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

and that the jurisdiction of the Federal Courts has been invoked by appellants who seek to have the Federal Courts apply the principle announced by the Supreme Court of the United States in the case of Gelpcke v. Dubuque, 1 Wall. 175, and follow the law as judicially declared at the time of the making of

the contract involved, that is, to recognize and apply the "principle of reliance" or "contract exception," laid down in the Gelpcke case, and adopted by the Supreme Court of Florida, as a principle of substantive law, before the contract in question was made.

IV

The Court has apparently overlooked the fact that a Federal question is involved in this case, in that, the decisions of the Supreme Court of the United States, in the case of Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, and in the later decisions following the doctrine announced there, are themselves predicated upon a Federal statute prescribing the effect to be given to State laws, and the appellants in this case are seeking to have the Federal Courts apply the principle of the case of Gelpcke v. Dubuque, 1 Wall. 175, and follow the law as judicially declared at the time of the making of the contract involved, that is, to recognize and apply the "principle of reliance" or "contract exception," laid down in the Gelpcke case, and adopted by the Supreme Court of Florida, as a principle of substantive law, before the contract in question was made.

V

It appears that the Court has considered, sua sponte, matters which the appellants had no opportunity to argue, that is to say, the Court has decided to remit the appellants to their remedy in the state courts, even though the appellants, who are citizens of the State of Kansas, and who have shown the jurisdictional amount in controversy, have not had an opportunity to insist that their contract rights be adjudicated in the Federal Courts.

VI

It appears that the Court has overlooked the fact that the question involved in this case is a matter of the contract rights of the appellants, and that the decisions cited in the majority opinion in this case,

in support of the action of this Court in remitting the appellants to their remedy in the state courts, are essentially different from this case, in the following respects:

1. In the case of Cavanaugh v. Looney, Attorney General, et al., 248 U. S. 453, 39 Sup. Ct. 142, certain citizens of a state applied to the Federal Court to enjoin a high official of the State from suing in the State Court to condemn private property for public use, such plaintiffs seeking to invoke the Federal jurisdiction on the theory that the State Courts might deny them of a Federal right.

2. In the case of Gilcrist v. Interborough Rapid Transit Co., 279 U. S. 159, 49 Sup. Ct. 282, a New York corporation applied to the Transit Commission of the State of New York for increased rates, and when its application had been denied, it then applied to the Federal Court to enjoin the Transit Commission from taking or prosecuting proceedings in the State Court to enforce the old rates, in the face of the fact that, under applicable statutes under which the corporation's franchises were granted, the corporation could not have resorted to a Federal Court without first applying to the Transit Commission.

3. In the case of Di Giovanni v. Camden Insurance Association, 296 U. S. 64, 56 Sup. Ct. 1, an insurance company applied to a Federal Court to cancel two insurance policies (neither of which exceeded $3000.00 in amount), which policies were alleged to have been fraudulently obtained, the plaintiff seeking to invoke the equitable jurisdiction of the Federal Court by the expedient of asserting that the avoidance of a multiplicity of suits was sought.

4. In Railroad Commission v. Pullman Co., 312 U. S. 496, 61 Sup. Ct. 643, it was held that "the case touches a sensitive area of social policy upon which the Federal courts ought not to enter unless no alternative to its adjudication is open."

5. In the case of Morin v. City of Stuart, 111 Fed. (2nd) 773, the Court recognized that the appropriate, if not indeed the exclusive remedy, for ousting a municipality chartered by the state from jurisdiction allegedly usurped by the municipality is a proceeding in quo warranto, such having been always recognized as a function reserved to the states themselves, through the action of the Attorney General of the State.

6. In the case of U. S. ex rel. Horigan v. Heyward, Mayor, et al., 98 Fed. (2nd) 433, it was held that an inquiry into the very existence of a municipality is in general reserved to the state itself in a direct proceeding by quo warranto.

Copies of this petition have been served upon opposing Counsel.

D. C. HULL.
ERSKINE W. LANDIS
JOHN L. GRAHAM
J. COMPTON FRENCH
Attorneys for Appellants

I, D. C. Hull, an attorney regularly admitted to practice in the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the above and foregoing petition is presented in good faith and not for delay, and that in my opinion it is well founded.

D. C. HULL
One of the Attorneys for Appellants

[fol. 207] ORDER DENYING REHEARING

Extract from the Minutes of March 12, 1943

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART

versus

CITY OF WINTER HAVEN, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, dissents."

[fol. 208] MOTION AND ORDER STAYING MANDATE—Filed March 22, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 10,402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART, Appellants,

versus

THE CITY OF WINTER HAVEN, a Municipal Corporation, et al., Appellees

On Appeal from the District Court of the United States for the Southern District of Florida

APPLICATION FOR STAY OF MANDATE

The appellants in the above entitled cause respectfully represent that they desire to petition the Supreme Court of the United States to review the judgment of this Court, and to that end, they propose to speedily prepare and file with the Supreme Court of the United States a petition for a writ of certiorari, and that to do so will involve the prepa-
[fol. 209] ration of a petition and brief in support thereof, and the printing of said petition and supporting brief, as well as parts of the record in this cause.

The appellants also represent that, unless this Court withholds its mandate, the dismissal of this cause in the District Court, in accordance with the judgment of this Court, would promptly follow.

The appellants further represent that the City of Winter Haven has caused to be published in The Bond Buyer, a financial paper published in the City of New York, a Notice of Redemption, in which it is stated that all City of Winter Haven General Refunding Bonds, dated April 1, 1933, Series "A" and Series "B", which may be still outstanding as of April 1, 1943, have been called for redemption and payment on *April 1, 1943*, at par plus that accrued interest evidenced by coupons *due on that date, upon presentation with all subsequent unmatured coupons thereto attached*, thus making no provision for paying any part of the "deferred interest" called for by the bond contract, and unless this Court withholds its mandate, the rights of the appellants will be seriously jeopardized.

The appellants further represent that the parties to this cause are now endeavoring to work out a settlement of this litigation, and that in the meantime the rights of the appellants ought not to be jeopardized by the going down of the mandate in this cause.

The appellants believe that, in view of the fact that this case involves the application of the doctrine announced in [fol. 210] the case of Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, and the doctrine announced in the case of Gelpcke vs. Dubuque, 1 Wall. 175, and adopted by the Supreme Court of Florida before the making of the contract involved, and in view of the fact that this case involves contract rights acquired in reliance upon the law as judicially declared by the Supreme Court of the State of Florida at the time of the making of the contract and before the decision of the Supreme Court of the United States in the Erie case, certiorari ought to be granted.

The appellants, therefore, hereby apply to this Court to enter an order staying its mandate for a suitable reasonable time—say 60 days—to afford the appellants an opportunity to prepare and file their petition and supporting brief, and to have prepared and filed with the Supreme Court of the United States the printed record in this cause, and to order that, if within said time said record and petition shall have been lodged with the Supreme Court of the United State-

and a certificate to that effect from the Clerk of the Supreme Court of the United States shall be obtained and filed with this Court, then the said mandate be automatically further stayed until the Supreme Court of the United States shall have acted upon such petition.

Copies of this application have been served upon opposing counsel.

D. C. Hull, Erskine W. Landis, John L. Graham, J. Compton French, Attorneys for Appellants.

[fol. 211] State of Florida,
County of Volusia:

On this day personally appeared before me D. C. Hull, who, being by me first duly sworn, deposes and says that he is one of the attorneys for the appellants in the above entitled cause, that the foregoing application is presented in good faith, and that it is the purpose of the appellants to petition the Supreme Court of the United States for a writ of certiorari as set forth in the above application.

D. C. Hull.

Sworn to and subscribed before me this 18th day of March, A. D. 1943. Elizabeth Graves, Notary Public, State of Florida at Large. My Commission Expires: May 4, 1945 (Notarial Seal.)

[fol. 212] United States Circuit Court of Appeals for the Fifth District

No. 10402

W. J. Meredith, James G. Martin and A. B. Ohmart, Appellants,

versus

City of Winter Haven, et al., Appellees

On Consideration of the Application of the applicants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of

the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 22nd day of March, 1943.

(Signed) J. C. Hutcheson, Jr., United States Circuit Judge.

[fol. 213] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 213] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.